

# **EXHIBIT 18**

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF ARKANSAS  
LITTLE ROCK DIVISION

CIVIL ACTION NUMBER

4:17-CV-00522-BSM

RONALD BURLIE THOMAS,

Plaintiff(s),

vs.

BORG-WARNER MORSE TEC, et al.,

Defendant(s).

VIDEOTAPE DEPOSITION TESTIMONY OF NAPA  
THROUGH THE 30(b)(6) REPRESENTATIVE GAYLORD SPENCER

August 2, 2018

10:03 a.m.

Atlanta Marriott Northwest

200 Interstate North Parkway

Atlanta, Georgia

COURT REPORTER:

David Miller, LCR, CCR, RPR, RMR

Job No. 2968250

## I N D E X

EXAMINATION BY:	PAGE NO.
Mr. Braly	7
Disclosure	70
Certificate	72

## INDEX OF EXHIBITS

EXHIBITS	PAGE NO.
PLF EXHIBIT 1 30(b)(6) depo notice	8
PLF EXHIBIT 2 Objections to deposition	8
PLF EXHIBIT 3 NAPA web page	19
PLF EXHIBIT 4 NAPA web page	22
PLF EXHIBIT 5 Gaylord Spencer affidavit	24
PLF EXHIBIT 6 NAPA web page	31
PLF EXHIBIT 7 NAPA web page	39
PLF EXHIBIT 8 Farmers lawsuit	42

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(Reporter disclosure made pursuant to  
Article 8.b of the Rules and Regulations of the  
Board of Court Reporting of the Judicial Council of  
Georgia)

1 I, David L. Miller, a Registered Merit  
2 Reporter, acting as Commissioner, certify that on  
3 this date, pursuant to the Federal Rules of Civil  
4 Procedure, there came before me at the offices of  
5 Atlanta Marriott Northwest, 200 Interstate North  
6 Parkway, Atlanta, Georgia, commencing at  
7 approximately 10:03 a.m. on August 2, 2018, GAYLORD  
8 SPENCER, witness in the above cause, for oral  
9 examination, whereupon the following proceedings  
10 were had:

11  
12 VIDEOGRAPHER: We are on the record.

13 My name is Mike Brown representing  
14 Veritext Legal Solutions. The date is August the  
15 2nd, 2018. The time on the video monitor 10:02 AM.

16 This is the video deposition is  
17 taking place at 200 Interstate North Parkway,  
18 Atlanta, Georgia, in the matter of Ronald Thomas  
19 versus Borg-Warner Morse Tec, LLC, et al.

20 The name of the witness -- this is  
21 the 30(b)(6) of NAPA.

22 Counsel, please state your name, for  
23 the record, and whom you represent.

24 MR. BRALY: This is Ben Braly for  
25 the Thomas family. I'm fine with everybody just

1 reflected in the stenographic record.

2 VIDEOGRAPHER: Okay. The court  
3 reporter is David Miller.

4 Would the court reporter please  
5 swear the witness.

6 COURT REPORTER: If you will raise  
7 your right hand for me, please, sir.

8  
9 GAYLORD SPENCER,  
10 having been first duly sworn, was examined and  
11 testified as follows:

12  
13 EXAMINATION BY MR. BRALY:

14  
15 Q. Good morning. My name is Ben Braly,  
16 and I represent the Thomas family.

17 Will you please introduce yourself.

18 A. My name is Gaylord Spencer.

19 Q. Mr. Spencer, do you understand that  
20 you are here today because you have been  
21 designated by attorneys for the National  
22 Automotive Parts Association, or NAPA, to be the  
23 corporate representative for them in this  
24 deposition?

25 A. Yes.



1 Q. Okay. Do you understand that the  
2 responses to the questions that I ask you are  
3 responses of NAPA, not necessarily the responses of  
4 you as an individual?

5 A. Yes.

6 Q. Okay. I'm going to hand you what  
7 has been marked as Exhibit Number 1, which is  
8 simply the legal document which establishes this  
9 procedure that we are doing here. It's called a  
10 notice of deposition.

11 (WHEREUPON, a document was marked as  
12 Plaintiff's Exhibit 1 and is attached to the  
13 original transcript.)

14 Q. Have you seen that document before?

15 A. Yes.

16 Q. I have been given this morning what  
17 has been marked as Exhibit Number 2, which are  
18 NAPA's objections to this deposition proceeding. I  
19 don't know if you have seen those or not.

20 (WHEREUPON, a document was marked as  
21 Plaintiff's Exhibit 2 and is attached to the  
22 original transcript.)

23 Q. I'm not going to ask you any  
24 questions about it.

25 MR. COLLIER: Before you get into

1 questioning can we put a couple of stipulations on?

2 MR. BRALY: What did you have in  
3 mind?

4 MR. COLLIER: Just that all  
5 objections other than form and responsiveness are  
6 reserved until the time of trial or other first  
7 permitted use of the transcript. I guess an  
8 objection by one is an objection by all.

9 And I think we would like to read  
10 and sign the transcript once the deposition  
11 concludes.

12 MR. BRALY: Sure. All of that is  
13 fine with me.

14 MR. COLLIER: Thank you.

15 Q. (BY MR. BRALY) Mr. Spencer, have you  
16 ever given a deposition before?

17 A. I have.

18 Q. Have you ever given a deposition as  
19 the corporate representative of NAPA before?

20 A. Yes.

21 Q. In an asbestos related context or  
22 not?

23 A. No.

24 Q. Okay. Approximately how many times  
25 have you given a deposition?

1           A.       Three or four times.

2           Q.       Three or four.   Okay.

3                    It doesn't particularly concern me  
4 as far as what these other cases were about, but  
5 just so I kind of have an idea of what types of  
6 cases you have testified in, can you tell me.

7                    I mean, were these cases in which  
8 NAPA had been sued for some various reason or NAPA  
9 was doing some suing for various reason or what was  
10 going on?

11           A.       These would be product liability  
12 cases.

13           Q.       Okay.   But not in the context of  
14 asbestos?

15           A.       No.

16           Q.       Okay.   As I understand it, you are  
17 the Corporate Secretary of the National Automotive  
18 Parts Association or NAPA, correct?

19           A.       Yes.

20           Q.       Okay.   Are you an employee of the  
21 Genuine Parts Company?

22           A.       No.

23           Q.       Your paycheck, your compensation,  
24 your Social Security taxes -- these are all  
25 associated with NAPA, correct?

1           A.       That's correct.

2           Q.       All right. How many other corporate  
3 office seats are there other than Secretary,  
4 President, Vice-President, things like that, if you  
5 know?

6                    Approximately, if you can  
7 approximate them.

8           A.       There is a Chairman, there is a  
9 President, there is Secretary. That's about all I  
10 know.

11          Q.       So the three of you?

12          A.       Uh-huh (Nodding head).

13          Q.       Okay. I'm sure this has been  
14 explained to you in the past, but we normally say  
15 uh-huh when we are just talking, you know, just  
16 conversationally.

17                    It's one of these rules that  
18 everyone hates lawyer about is you have to say  
19 "yes" or "no".

20          A.       Yes.

21          Q.       Okay. The President and Vice-  
22 President are who?

23                    MR. COLLIER: Object to the form.

24          A.       Of?

25          Q.       NAPA.

1           A.       The President of NAPA is Dan Askey;  
2       the chairman is Paul Donahue.

3           Q.       Do you know if either of those  
4       individuals have any kind of leadership position or  
5       Board position with Genuine Parts Company?

6                   MR. COLLIER: Object to the form.

7           A.       Yes.

8           Q.       Yes for both or yes for --

9           A.       Yes for both.

10          Q.       Do you have any Board position with  
11       Genuine Parts Company?

12          A.       No.

13          Q.       Do you have any affiliation with  
14       Genuine Parts Company?

15                   MR. COLLIER: Object to the form.

16          A.       Well, they are a member company of  
17       the National Automotive Parts Association. From  
18       that standpoint I have an association with them.

19          Q.       But no leadership position, no board  
20       position, no --

21          A.       No.

22          Q.       Okay. And you receive no  
23       compensation from Genuine Parts Company directly?

24          A.       No.

25          Q.       Okay. Other than the contents of

1 conversations that you have had with attorneys for  
2 the National Automotive Parts Association, can you  
3 tell me what you have done to prepare for your  
4 deposition today.

5 A. Just read through past depositions  
6 and looked through some of the paperwork that has  
7 been provided.

8 Q. When you say past depositions, past  
9 depositions of whom?

10 A. Genuine Parts Company  
11 representatives.

12 Q. So Paul Lacour, Mr. Hawley;  
13 individuals like this?

14 A. I have never seen Paul Lacour.

15 Q. I'm sorry. That's not the right  
16 person.

17 Can you tell me whose prior  
18 depositions that you have reviewed?

19 A. Mark Coey. I don't think I have  
20 looked at any of Byron's. And then some really old  
21 NAPA ones, like Ross Kennedy from way back.

22 Q. For what purpose would you be  
23 reviewing Mr. Kennedy's deposition?

24 MR. COLLIER: Object to the form.

25 A. Just to make sure I understood kind

1 of what the line of questioning might be and to  
2 understand the issues.

3 Q. Okay. Let's get a couple of things  
4 kind of moved out of the way.

5 NAPA does not manufacture products,  
6 correct?

7 A. NAPA doesn't manufacture, sell, or  
8 distribute any products.

9 Q. Our deposition notice asked for a  
10 series of documents associated with NAPA, including  
11 documents related to the identity of the NAPA  
12 partners in Arkansas, things of that nature.

13 Did you have a chance to review or  
14 look for any of those documents?

15 MR. COLLIER: Object to the form.

16 A. I didn't look for those documents  
17 because I don't think those documents exist. We  
18 don't have a method of keeping documents, and there  
19 is no really repository for NAPA documents that I'm  
20 aware of.

21 Q. All right. I will come back to  
22 that.

23 In your own words, can you describe  
24 for us what is NAPA.

25 A. Well, NAPA is a membership

1 corporation formed in Michigan in 1925 that,  
2 basically, serves at the pleasure of our members.

3 It was formed back then as a way to  
4 get things under one umbrella. The automotive  
5 parts business at that point was very fragmented  
6 and you could only gets parts from OE  
7 manufacturers.

8 So this group of Continental Motor  
9 parts distributors banded together to try to form a  
10 way to get parts easier, better, and more  
11 organized.

12 And if you understand that, then you  
13 kind of can fast forward through the years. It's  
14 made up of members that are, basically, parts  
15 distributors.

16 Q. Okay. Currently the only -- the  
17 only member of the association is Genuine Parts  
18 Company, correct?

19 A. Yes.

20 Q. Previously there -- Genuine Parts  
21 Company has, I believe, since 1929 been a member of  
22 the National Automotive Parts Association, correct?

23 A. 1928, I think.

24 Q. 1928. Okay.

25 Between 1928 and the present day,



1 there have been other members of the National  
2 Automotive Parts Association, correct?

3 A. Yes.

4 Q. It would be correct to say that  
5 those other members are regionally based. For  
6 example, I think -- is it -- Quaker City Auto was a  
7 member of National Automotive Parts Association at  
8 one point in time, correct?

9 MR. COLLIER: Object to the form.

10 A. That's correct.

11 Q. Okay. And they covered a regional  
12 area from Philadelphia -- I'm sorry --  
13 Pennsylvania, Delaware, and kind of the  
14 mid-Atlantic area, correct?

15 A. That's correct.

16 Q. Their involvement with NAPA would  
17 not extend beyond their geographic area?

18 MR. COLLIER: Object to the form.

19 A. So each of the member companies has  
20 Distribution Centers that, as you describe,  
21 typically are in an area of the country in its  
22 history.

23 And, yes, so Quaker City would be in  
24 this part of the country. And Davis & Willmar or  
25 GAP or whoever it was -- they would have areas of

1 the country they would distribute parts in through  
2 their system -- through their Distribution Center.

3 Q. So who were the other members of  
4 NAPA, historically speaking?

5 MR. COLLIER: Object to the form.  
6 Can you give like a --

7 A. Time -- I mean --

8 MR. COLLIER: -- more specific time  
9 frame?

10 A. How about if I tell you in 1990 --  
11 that's when I started.

12 Q. Do you have any information about  
13 who the members of NAPA would have been, say,  
14 between 1960 and 1980?

15 MR. COLLIER: Object to the form.

16 A. I don't. That was before me. I  
17 have some knowledge of some of those companies, but  
18 I can't go to a place and look it up.

19 Q. Okay. Throughout that period of  
20 time, however, you know that Genuine Parts Company  
21 was a member of NAPA during that time period,  
22 correct?

23 A. Correct.

24 Q. Genuine Parts Company was a --  
25 I withdraw that.

1 NAPA currently maintains sixty  
2 Distribution Centers around the United States,  
3 correct?

4 MR. COLLIER: Object to the form.

5 A. Well, NAPA is a membership company.  
6 They don't have any Distribution Centers. NAPA  
7 doesn't own any Distribution Centers.

8 Genuine Parts Company has  
9 fifty-seven Distribution Centers right now.

10 Q. Okay. How many employees does NAPA  
11 have?

12 A. Thirteen.

13 Q. Who are they?

14 A. Name each one?

15 Q. Yeah.

16 A. I can name the ones that report to  
17 me.

18 So Gaylord Spencer. It would be  
19 Mark Socinski, it would be Whitney Swingle, Amy  
20 Festey, Robert Reardon, Jason Rainy, Emily Beutler,  
21 Nathalia Herd, Joele -- I can't remember her last  
22 name. A couple of these people don't report to me  
23 so I can't think of their names. That's who I can  
24 remember.

25 Q. Okay. Do all of these individuals

1 work in Atlanta?

2 A. They do.

3 Q. Okay. Sir, are you familiar with  
4 NAPA's website?

5 A. I am.

6 Q. Do you know that there is a website?

7 A. I do.

8 Q. I will hand you something that I  
9 took from NAPA's website today. I will mark it as  
10 Exhibit Number 3.

11 MR. COLLIER: Can I see a copy of  
12 that.

13 (WHEREUPON, a document was marked as  
14 Plaintiff's Exhibit 3 and is attached to the  
15 original transcript.)

16 Q. Sir, in the information that is  
17 found on NAPA's website today it says that there  
18 are seventeen thousand awesome NAPA employees.

19 Do you see that?

20 A. I do.

21 Q. That's more than thirteen, right?

22 A. It is.

23 Q. Who is telling the truth here; the  
24 website or you?

25 MR. COLLIER: Object to the form.

1 A. I'm telling the truth.

2 Q. The website isn't?

3 MR. COLLIER: Object to the form.

4 A. The website is using a broader  
5 connotation of those people that work in a NAPA  
6 outlet that says NAPA on the -- on the facility  
7 name. So they are including them.

8 Q. Okay. The website also says there  
9 are sixty NAPA Distribution Centers, correct?

10 A. Yes.

11 Q. Okay. Again, is the website just  
12 sending out incorrect information or how do we  
13 characterize this, because you had told me at the  
14 very beginning of this deposition that NAPA doesn't  
15 distribute products. The website says there are  
16 sixty Distribution Centers.

17 MR. COLLIER: Object to the form.

18 A. This website is a NAPA careers  
19 website that looks like it is a page from HR, and  
20 the information here is not completely accurate.

21 Q. Do you know who's responsible for  
22 maintaining that website?

23 A. I don't.

24 Q. Would it be one of the thirteen  
25 people that you claim works for NAPA?

1 MR. COLLIER: Object to the form.

2 A. It would not.

3 Q. So there is not a NAPA employee who  
4 is responsible for maintaining NAPA's website?

5 A. No.

6 Q. Is there any -- who would? I don't  
7 understand that.

8 MR. COLLIER: Object to the form.

9 A. Genuine Parts Company is our largest  
10 member, and they are maintaining the website.

11 Q. For the sixty Distribution Centers  
12 for NAPA products, one of the topics in the  
13 deposition notice asked you to be prepared to talk  
14 about geographically where the nearest Distribution  
15 Center to Little Rock, Arkansas, would have been in  
16 the 1970s.

17 Do you have that information?

18 A. Well, there was a Distribution  
19 Center in Little Rock. I don't know the exact  
20 address, but we know that there was a Distribution  
21 Center in Little Rock owned by Genuine Parts  
22 Company.

23 Q. How do you know it was owned by  
24 Genuine Parts Company and not by NAPA?

25 MR. COLLIER: Object to the form.

1           A.       NAPA has never owned any  
2       distribution companies. If you look at the 1979  
3       annual report of Genuine Parts, it will talk about  
4       opening the Little Rock DC.

5           Q.       You had mentioned NAPA -- never  
6       mind. I withdraw that.

7                    You know, on NAPA's website -- this  
8       is Exhibit Number 4.

9                    (WHEREUPON, a document was marked  
10      as Plaintiff's Exhibit 4 and is attached to the  
11      original transcript.)

12          Q.       On NAPA's careers website -- and  
13      it's actually an entirely separate section of  
14      NAPA's website devoted to the various jobs that you  
15      can get with NAPA -- there are these biographies of  
16      individuals who work for NAPA around the country.

17                   Have you seen this?

18          A.       I have not.

19                   MR. COLLIER: Object to the form. I  
20      want to make sure you have time to read it before  
21      you answer any questions.

22          Q.       Sure.

23          A.       Okay.

24          Q.       Okay. Do you know who Mark -- I  
25      think it's Pesce, P-E-S-C-E, the individual who is

1 featured here from Phoenix, Arizona?

2 A. I do not.

3 Q. Or Erika Casas Sotelo?

4 A. I don't know.

5 Q. Okay. Do you know if any of these  
6 individuals are receiving paychecks directly from  
7 NAPA as opposed to Genuine Parts Company, or do you  
8 know?

9 MR. COLLIER: Object to the form.

10 A. Well, they would be GPC employees.

11 Q. How do you know that?

12 A. Well, because they -- it says HR  
13 Generalist in Fresno. Fresno is a Genuine Parts  
14 Company DC.

15 I know who the thirteen people are  
16 that work for NAPA. So by default, they have to be  
17 Genuine Parts Company employees.

18 Q. So, basically, NAPA is just a front  
19 here for Genuine Parts Company?

20 MR. COLLIER: Object to the form.

21 A. I don't like the word "front." But,  
22 I mean, a lot of people within Genuine Parts  
23 Company think of themselves as NAPA people. It's  
24 the brand.

25 Q. You have authored affidavits in the



1 past which claim that NAPA does not profit from the  
2 sale of products; something to that effect.

3 A. (Nods head)

4 Q. Are you familiar with that  
5 statement, just generally speaking?

6 MR. COLLIER: Object to the form. Do  
7 you have any of those?

8 MR. BRALY: Sure.

9 Q. (BY MR. BRALY) I have marked this  
10 one as Exhibit Number 5. Let me identify it for a  
11 second.

12 MR. COLLIER: Sure.

13 Q. This is a declaration of Gaylord  
14 Spencer in support of the National Automotive Parts  
15 Association's motion for summary judgment in a case  
16 called Coogan. It was pending in Pierce County,  
17 Washington.

18 (WHEREUPON, a document was marked as  
19 Plaintiff's Exhibit 5 and is attached to the  
20 original transcript.)

21 MR. COLLIER: Thanks. Please read  
22 through it before you answer any questions.

23 MR. BRALY: Yeah.

24 (Pause)

25 Q. (BY MR. BRALY) The rest is just

1 service information.

2 A. What was the question again?

3 Q. Let me remind myself.

4 It's item number six I was going to  
5 ask you about. The statement that you put in this  
6 one is, "NAPA does not receive any direct financial  
7 payment from the sale of any particular automotive  
8 part."

9 A. Yes.

10 Q. Okay. I want to parse that out just  
11 a little bit.

12 NAPA branded Distribution Centers  
13 distributed asbestos containing products, including  
14 brakes and clutches during the time period in which  
15 asbestos containing brakes and clutches were sold,  
16 correct?

17 MR. COLLIER: Object to the form.

18 A. That's a mouthful.

19 NAPA member companies -- you keep  
20 saying NAPA Distribution Centers. But they are  
21 NAPA member Distribution Centers. They are not  
22 owned by NAPA. They are owned in this case by  
23 Genuine Parts Company. They distributed a variety  
24 of parts.

25 Q. Okay. The question was actually

1 NAPA branded Distribution Centers -- including in  
2 Little Rock, Arkansas -- distributed asbestos  
3 containing brake products and gasket products  
4 during a time period in which those products were  
5 asbestos containing, correct?

6 MR. COLLIER: Object to the form;  
7 asked and answered.

8 A. I still -- as soon as you say the  
9 word NAPA branded Distribution Centers -- I can't  
10 get past that because that's not really what they  
11 are.

12 Q. It's a Distribution Center, correct?

13 A. Correct.

14 Q. With the NAPA name on it, correct?

15 A. It hangs a NAPA logo on it.

16 Q. Right.

17 A. But they aren't NAPA Distribution  
18 Centers in a business entity name.

19 Q. Right.

20 They are not, to your knowledge,  
21 labeled as Genuine Parts Company Distribution  
22 Centers as far as their marketing or for the world  
23 to see; is that fair?

24 MR. COLLIER: Object to the form.

25 A. I think when you walk into them on

1 the door it will saying Genuine Parts Company.

2 Q. The one in Little Rock, Arkansas,  
3 specifically?

4 MR. COLLIER: Object to the form.

5 A. I'm not sure.

6 Q. The signage on the outside would  
7 carry the yellow and blue octagonal NAPA sign,  
8 correct?

9 A. Yes.

10 Q. That would have been true in the  
11 1970s as well, correct?

12 MR. COLLIER: Object to the form.

13 A. I don't know.

14 Q. You don't know what the NAPA logo  
15 looked like in the 1970s?

16 A. I know what the logo looked like. I  
17 don't know if it was on the Distribution Center in  
18 that time period.

19 Q. Other than Little Rock, what other  
20 Distribution Centers carrying the NAPA logo or the  
21 NAPA name would have been in Arkansas, if you know,  
22 in the 1970s?

23 A. I'm not aware of any others.

24 Q. All right. Let's talk about the  
25 purpose or the value that is given through

1 Distribution Centers for a moment.

2 NAPA, as an association, has a --  
3 it's not a franchise, it's a -- there's a name for  
4 it -- a retailer cooperative of sorts; is that fair  
5 to say?

6 MR. COLLIER: Object to the form.

7 A. I have never --

8 Q. You have never heard it called that?

9 A. I have never heard that called. We  
10 always refer to ourselves as a membership

11 association, sometimes a trade association.

12 Q. All right. NAPA, as an association,  
13 has a method by which someone who runs an auto  
14 parts store can have access to NAPA distribution  
15 and NAPA signage, correct?

16 MR. COLLIER: Object to the form.

17 A. Part of what NAPA does is we provide  
18 marketing programs and services to member  
19 companies.

20 So I'm not sure if I am answering  
21 your question or not, but --

22 Q. Okay. You are.

23 If, Ben -- me -- if I am running an  
24 auto parts store in Dallas, Texas, where I'm from,  
25 and I want access to the inventory in a NAPA

1 Distribution Center -- or a NAPA branded  
2 Distribution Center, and I want to be able to put  
3 the NAPA logo and NAPA signage, I would contact  
4 your association, NAPA --

5 A. No, sir.

6 Q. -- and discuss how to do that?

7 MR. COLLIER: Object to the form.

8 Q. Is that not correct?

9 A. That's not correct.

10 Q. How would that happen?

11 A. If you were Ben in Dallas and you  
12 wanted to open a NAPA store or display NAPA on an  
13 existing outlet, you would contact the Distribution  
14 Center nearest you, because the Distribution Center  
15 is the one managing that process.

16 Q. Okay. At that point in time --  
17 however that happened -- okay.

18 So I contact the Distribution Center  
19 that is not really a NAPA Distribution Center, but  
20 the GPC Distribution Center that has the NAPA name  
21 on it to become a NAPA store; is that right?

22 MR. COLLIER: Object to the form.

23 A. The relationship between the store  
24 or the outlet and the manufacturer -- or whoever is  
25 getting the parts -- is between the store and the

1 Distribution Center.

2 So the Distribution Center makes the  
3 call on, you know, whether they want to sell a  
4 store and whether the store can be a NAPA store or  
5 not.

6 Q. And the Distribution Center, at  
7 least according to you, is not really NAPA  
8 employees, they are Genuine Parts employees; is  
9 that what I'm hearing from you?

10 A. That's correct.

11 Q. Okay. At that point in time I would  
12 need to write a check to somebody for a store in  
13 Dallas between a hundred thousand and two hundred  
14 and fifty thousand dollars, right?

15 MR. COLLIER: Object to the form.

16 A. I have -- where did you get that  
17 number? I don't even understand where the number  
18 is coming from.

19 Q. Okay. Again, there is a whole  
20 section of NAPA's website dealing with how to  
21 establish a NAPA store.

22 I will hand you this. It's marked  
23 as Exhibit Number 6.

24 (WHEREUPON, a document was marked as  
25 Plaintiff's Exhibit 6 and is attached to the

1 original transcript.)

2 Q. Sir, Exhibit Number 6 is a printout  
3 of a section on NAPA's website dealing with  
4 partnering with NAPA for store locations.

5 MR. COLLIER: Make sure you read it  
6 all before you start responding, please.

7 Q. Have you ever seen this before?

8 A. I have not. I'm not familiar with  
9 this.

10 Q. Okay. Do you see in the column that  
11 lists out the costs associated with generating  
12 inventory and signage and everything else that goes  
13 along with being a NAPA store for a larger city  
14 like Dallas -- you would be talking about an  
15 investment of between a hundred thousand and two  
16 hundred and fifty thousand dollars if I was to  
17 become a NAPA store?

18 MR. COLLIER: Object to the form.

19 A. Okay. I think -- if I am reading --  
20 if I am understanding your question -- if I am  
21 reading this right, it's saying that the total  
22 investment would be eight hundred and fifty  
23 thousand, but you would need a hundred and fifty to  
24 two hundred thousand.

25 Q. Right.



1 I would have to write somebody a  
2 check for access to the distribution network and  
3 the signage?

4 A. In other words --

5 MR. COLLIER: Object to the form.

6 A. For the Dallas Distribution Center,  
7 in your example to put you in business -- if they  
8 selected you and you selected them to be a  
9 partner -- they would -- you would need to have  
10 that kind of money to be able to put inventory in  
11 and fixtures and stuff. I think that's an  
12 estimate.

13 Q. And if you are not one of the NAPA  
14 partner companies, you would not have access to the  
15 NAPA branded Distribution Centers; is that correct?

16 MR. COLLIER: Object to the form.

17 A. NAPA partner companies -- I'm still  
18 not sure what you mean by that.

19 Q. If I wasn't a NAPA branded store --  
20 a NAPA jobber so to say -- I would not have access  
21 to NAPA's Distribution Centers?

22 MR. COLLIER: Object to the form.

23 A. So I think the question is  
24 Distribution Centers -- GPC Distribution Centers  
25 that sell NAPA parts -- they only sell to NAPA

1 stores.

2 Q. Okay.

3 A. I think I did that backwards what  
4 you described.

5 Q. It sounds like the answer to my  
6 question is right -- is correct, but just to kind  
7 of wrinkle this out a little bit.

8 In order to receive NAPA parts from  
9 a GPC Distribution Center that has NAPA's name on  
10 it I would have to be a part of NAPA's network of  
11 jobber individuals; fair?

12 MR. COLLIER: Object to the form.

13 A. Yes.

14 Q. Okay. I couldn't just run Moe's  
15 Auto Parts store and call a NAPA Distribution  
16 Center and say, "Hey, I need some NAPA parts,"  
17 because they will not sell to me if I am not part  
18 of this jobber network, correct?

19 MR. COLLIER: Object to the form.

20 A. Correct.

21 Q. In addition, the NAPA Distribution  
22 Centers exclusively service and provide parts to  
23 Genuine Parts Company owned retail stores, correct?

24 MR. COLLIER: Object to the form.

25 A. So Genuine Parts Company owns NAPA

1 stores is what you are talking about?

2 Q. Right.

3 A. So they would receive their parts --  
4 again, from your example -- from the Dallas GPC  
5 Distribution Center.

6 Q. Right.

7 Or in the case of Mr. Thomas -- you  
8 are aware that Mr. Thomas had testified that he  
9 purchased NAPA branded parts from a location that  
10 has been identified as a Genuine Parts Company  
11 owned store.

12 Are you aware of that?

13 A. I am from reading the documents.

14 Q. Okay. Did you read Mr. Thomas'  
15 deposition, by the way?

16 A. I did.

17 Q. Okay. Did you read Mr. Parsons'  
18 deposition?

19 A. I did.

20 Q. You did. Okay.

21 Was there anything about either of  
22 their testimonies that kind of jumped out at you  
23 as -- you know, just in your experience as not  
24 something that was plausible or something that you  
25 had some kind of disagreement with -- it just

1 stands out with you that you would like to discuss  
2 with me?

3 MR. COLLIER: Object to the form.  
4 Are you asking him in his personal capacity?

5 MR. BRALY: He hasn't been noticed  
6 in his personal capacity. I'm just asking him if  
7 there is, you know --

8 THE WITNESS: Not really, no.

9 Q. (BY MR. BRALY) Okay. I understand  
10 that NAPA is organized as a nonprofit corporation;  
11 is that correct?

12 A. That's correct.

13 Q. Do you happen to know if I was going  
14 to say 501(c) something -- under what section of  
15 the tax code they are organized?

16 Is that something that you know?

17 A. No.

18 Q. All right. Where does the revenue  
19 come from to pay your salary?

20 A. Okay. There are three or four  
21 sources of revenue for NAPA. It comes from -- it  
22 could come from royalties from, say, uniforms or  
23 things that people get that display the NAPA logo.  
24 We would get a small amount of money for that.

25 We also ask our -- ask NAPA branded

1 stores to contribute to national advertising, which  
2 almost all do because they see the benefit of the  
3 NAPA brand.

4 And we also get money from the  
5 supplier manufacturer base in terms -- in the form  
6 of a small percentage that again falls into the  
7 pot, so to speak.

8 We use that -- those proceeds from  
9 those revenues to pay for television, radio,  
10 sponsorships, et cetera.

11 Q. The last one -- the small  
12 percentage -- what was that from?

13 A. Suppliers to Genuine Parts Company.

14 Q. Okay. There are -- NAPA, as an  
15 organization, does a significant amount of  
16 marketing; fair?

17 A. Yes.

18 Q. Radio, print, TV, correct?

19 A. Yes.

20 Q. They have got that neat jingle,  
21 "NAPA know how?"

22 A. Thank you.

23 Q. Yeah. It's catchy.

24 This was all part of raising the  
25 awareness for people to want to be associated with

1 NAPA; fair?

2 MR. COLLIER: Object to the form.

3 A. I don't know so much it's people  
4 wanting to be associated with NAPA. We want  
5 people -- whether it's consumers or whether it's  
6 technicians -- to think NAPA when they need an  
7 automotive part.

8 Q. Okay. The funding for this  
9 nationwide ad campaign comes from a percentage of  
10 sales that Genuine Parts provides back to NAPA; did  
11 I hear that right, or no?

12 MR. COLLIER: Object to the form.

13 A. Let me try to explain.

14 Q. Sure.

15 A. Mainly two -- mainly two places.  
16 First, from stores there is a percentage -- a small  
17 percentage.

18 And then the second is from what I  
19 classify as suppliers or manufacturers that provide  
20 a small percentage -- we call an ad allowance --  
21 back -- it comes back from -- through the DCs, and  
22 then back to the member company, and then back to  
23 us.

24 Q. So this ad allowance for the  
25 suppliers or manufacturers goes back to the NAPA

1 branded DC that is owned by Genuine Parts?

2 A. That's correct.

3 Q. And then it goes back to the member  
4 company, which is the Genuine Parts Company?

5 A. That's correct.

6 Q. And then it goes to NAPA?

7 A. That's correct.

8 Q. It is from that revenue, in part,  
9 that funds the marketing aspects of NAPA?

10 A. That's correct.

11 Q. Okay. And as it relates to the  
12 stores -- I hate to use the word "tax" -- but it is  
13 kind of like a tax on store owners for marketing  
14 purposes?

15 MR. COLLIER: Object to the form.

16 A. Well, we just refer to it as an ad  
17 allowance.

18 Q. Fine.

19 So there is an ad allowance. Is  
20 this levied on stores; I mean, do they have to pay  
21 it?

22 A. Nothing in NAPA is have to. They  
23 don't have to do anything. Ninety-nine percent of  
24 them do it because they see the benefit.

25 Q. That money goes back through the

1 NAPA branded Distribution Centers, which then goes  
2 to Genuine Parts, which then goes back to NAPA?

3 A. Same stream.

4 Q. NAPA spends a significant amount of  
5 money on marketing or advertising, correct?

6 MR. COLLIER: Object to the form.

7 A. I guess it depends on how you  
8 determine significant.

9 Q. Sure.

10 A. A fair amount of money, yes.

11 Q. NAPA maintains primary sponsorship  
12 throughout the racing circuits in the United  
13 States; NASCAR, Indy, NHRA, Outlaw?

14 A. Yes.

15 Q. There is a whole section on NAPA's  
16 website dealing just with their racing  
17 sponsorships; are you aware of that, correct?

18 MR. COLLIER: Object to the form.

19 A. I would like to see it before I say  
20 I'm aware of it.

21 Q. Okay. If you are not aware of it,  
22 that's fine.

23 Marking Exhibit Number 7.

24 (WHEREUPON, a document was marked as  
25 Plaintiff's Exhibit 7 and is attached to the



1 original transcript.)

2 A. Okay.

3 Q. Okay. For example, in the NASCAR  
4 Sprint Cup Series NAPA is the primary sponsor for  
5 Chase Elliott, who is a driver in that circuit,  
6 correct?

7 A. Correct.

8 Q. You are aware that prior to that  
9 they had been the primary sponsor for Michael  
10 Waltrip, correct?

11 A. Yes, I'm aware.

12 Q. Going back for several decades,  
13 right?

14 A. Yeah.

15 Q. I think Martin Tuex at some point,  
16 too?

17 A. Yeah.

18 Q. Do you know what it cost to be a  
19 primary sponsor for a season in the NASCAR Sprint  
20 Cup series alone?

21 MR. COLLIER: Object to the form.

22 A. I do.

23 Q. What is NAPA paying a year to be the  
24 primary sponsor for Chase Elliott's car in the  
25 NASCAR circuit this year?

1           A.       Fourteen million.

2           Q.       Only fourteen million?

3                   MR. COLLIER: Object to the form.

4           A.       Yeah.

5           Q.       Okay. I asked because you may not  
6 know this. There was a lawsuit between another  
7 primary sponsor and another driver a couple of  
8 years ago -- between an individual named Kasey  
9 Kahne and his primary sponsor, Farmers Insurance.

10                   Do you know about this at all?

11          A.       I do.

12          Q.       Okay. And that lawsuit established  
13 that Farmers Insurance -- or their primary  
14 sponsorship was paying on the order of sixty-seven  
15 million dollars a year for their primary  
16 sponsorship of that ride.

17                   Are you aware of that?

18                   MR. COLLIER: I am going to object  
19 to the form. We are getting way outside of the  
20 scope of the deposition notice.

21          Q.       Are you aware of that?

22          A.       I'm not.

23          Q.       Okay. I will hand you -- I will  
24 have it marked. I won't ask any more questions  
25 about that.

1 (WHEREUPON, a document was marked as  
2 Plaintiff's Exhibit 8 and is attached to the  
3 original transcript.)

4 Q. I'm not going to ask you any more  
5 questions about it. Just set that aside. I just  
6 wanted that to be part of the record.

7 What is NASCARS -- I'm sorry.

8 What is NAPA's yearly funding to be  
9 the primary sponsor for a car in the Indy car  
10 series?

11 MR. COLLIER: Object to the form.  
12 Again, I think we are way outside of the scope of  
13 the deposition notice. There is no topic related  
14 to --

15 MR. BRALY: It has to do with where  
16 the money comes from.

17 MR. COLLIER: Well, this is money  
18 that they are paying.

19 MR. BRALY: That's fine.

20 MR. COLLIER: I will let you ask a  
21 couple of more questions.

22 MR. BRALY: Sure. I only have a  
23 couple of more.

24 MR. COLLIER: Okay.

25 THE WITNESS: This is hard to

1 remember all of these numbers. I think the Indy  
2 car series -- we don't have the whole series, we  
3 have about half of the races. And I believe it's  
4 about three and a half million.

5 Q. (BY MR. BRALY) What about for NHRA?

6 MR. COLLIER: Same objections.

7 A. Twenty-four races, three and a half  
8 million.

9 Q. All right. And for -- I always call  
10 it Outlaw, but that's not the actual name for it.

11 A. World of Outlaws.

12 Q. Yeah.

13 For that circuit, what does NAPA's  
14 sponsorship cost a year?

15 MR. COLLIER: Same objections.

16 A. It's a lot less. Like eight hundred  
17 and fifty thousand dollars, something like that.

18 Q. The role of a Distribution Center --  
19 let me talk to you about that for just a little  
20 bit.

21 A Distribution Center provides value  
22 to the people who shop at that Distribution Center  
23 by sourcing parts from manufacturers or suppliers  
24 into a singular location; fair?

25 MR. COLLIER: Object to the form.

1           A.       Shops at a Distribution Center --  
2       nobody really shops at a Distribution Center.   The  
3       Distribution Center distributes parts to stores.

4           Q.       Right.

5                   The value that they add to those  
6       stores is by collecting and acquiring parts from a  
7       multiplicity of other sources so that those stores  
8       don't have to then source all of those parts  
9       individually.

10                   MR. COLLIER: Object to the form.

11           A.       Oh, I see what you are saying.

12                   Well, you are in GPC land here.

13       But, I mean, a Distribution Center would purchase  
14       parts from a number of different vendors,  
15       consolidate them, keep them under one roof.

16                   And then, yes, a store could then  
17       buy the parts that they have in that Distribution  
18       Center from one single source.

19           Q.       Okay. Do you know who the manager  
20       was -- or the owner, I suppose, was of the  
21       Distribution Center in Little Rock, Arkansas, in  
22       the 1970s?

23                   MR. COLLIER: Object to the form.

24           A.       No.

25           Q.       Do you know how you would find that

1 out, if you could?

2 MR. COLLIER: Object to the form.

3 A. Well, again, it's a Genuine Parts  
4 Company Distribution Center. So I -- NAPA doesn't  
5 keep records of that sort of thing, but maybe  
6 Genuine Parts Company does.

7 Q. Do you know who Leigh Ann Brewer is?

8 A. Only from the deposition that I read  
9 from Mr. Coey.

10 Q. Okay. Did you ever read Leigh Ann  
11 Brewer's deposition?

12 A. No. I didn't even know she gave a  
13 deposition.

14 Q. Individuals who -- so I just kind of  
15 want to understand this.

16 If I wanted to get a job at a NAPA  
17 branded Distribution Center, and I went on NAPA's  
18 website -- NAPAonline.com, -- and I went to the  
19 NAPA careers section and filled out an application  
20 to work in a NAPA Distribution Center, you are  
21 telling me through all of that I'm really applying  
22 to work for Genuine Parts Company?

23 MR. COLLIER: Object to the form.

24 A. That's right. I don't really have  
25 visibility to any of that. That's a Genuine Parts

1 Company driven initiative. They would be working  
2 for Genuine Parts Company.

3 Q. These warehouses that -- there is no  
4 dispute that the parts that are sold into these  
5 warehouses, and then sold out of these warehouses,  
6 would be in the chain of distribution for whatever  
7 those parts would be; is that fair?

8 MR. COLLIER: Object to the form.

9 A. I'm sorry, I don't understand.

10 Q. Moving parts -- moving, really,  
11 anything.

12 It would be fair to say that from  
13 the point of manufacture to the point distribution  
14 to the point of end use that that Distribution  
15 Center would be in that overall chain of how a  
16 product gets moved; fair?

17 A. Yes.

18 Q. Okay. It's your contention, as you  
19 sit here today, though, that the Distribution  
20 Centers that are labeled NAPA, and referred to as  
21 NAPA Distribution Centers -- called NAPA  
22 Distribution Centers on NAPA's website -- are  
23 really just Genuine Parts Corporation Distribution  
24 Centers; is that right?

25 A. Yes.

1 MR. COLLIER: Object to the form.

2 Q. I did not do a sufficient job of  
3 talking to you about what your corporate history is  
4 with NAPA. I kind of want to do that for just a  
5 little bit.

6 You began with them in 1990, I  
7 believe you said.

8 A. That's correct.

9 Q. Just because I have not seen any  
10 prior transcripts of you, I want to do like a  
11 little bit of a resume' walkthrough, if you don't  
12 mind.

13 Did you attend college?

14 A. I did.

15 Q. Where?

16 A. Cedarville College in Cedarville,  
17 Ohio.

18 Q. Did you graduate with a degree?

19 A. I did.

20 Q. When was that?

21 A. 1977.

22 Q. Between 1977 and 1990 can you walk  
23 me through what your professional experience was up  
24 to that point.

25 A. Sure.



1 Q. Okay.

2 A. In 1977 I graduated from Cedarville.  
3 I went to work for a company in Indianapolis called  
4 Guaranty Auto Stores. They had about fifty stores  
5 throughout Indiana.

6 I was a management trainee. I did  
7 pretty much everything -- you know, did all things  
8 trainees do. And, you know, pulled parts and, you  
9 know --

10 Q. Made the coffee?

11 A. Did everything.

12 Q. Yeah.

13 A. And then I eventually worked my way  
14 up to a store manager in that system. I was a  
15 store manager for a couple of years.

16 Then I came in as what they call the  
17 buyer. So I was a buyer at corporate headquarters  
18 for awhile.

19 Q. May I stop you for a second?

20 A. Of course.

21 Q. This is completely interrupting you.  
22 It's not appropriate, so you can tell me to jump  
23 off and I will.

24 I want to follow up on just a couple  
25 of these things before you go on to being a buyer.

1           A.       Okay.

2           Q.       Your degree was in what?

3           A.       It was in business.

4           Q.       Okay. Guaranty Auto -- you said it  
5 was in Indianapolis?

6           A.       Yes.

7           Q.       Was all of your work done in  
8 Indianapolis?

9           A.       No. I -- they were spread  
10 throughout Indiana, so I was throughout Indiana  
11 during various times.

12          Q.       But all in Indiana?

13          A.       Yes.

14          Q.       Were they affiliated with NAPA?

15          A.       No.

16          Q.       All right, sir. And then you  
17 became -- I cut you off when you were becoming a  
18 buyer.

19                   Do you remember what year that would  
20 have been?

21          A.       It was about '81.

22          Q.       All right. Was this also with  
23 Guaranty Auto?

24          A.       It was.

25          Q.       Please continue.

1           A.       So -- and just, again, is a small  
2       company. So I worked my way up and was eventually  
3       head of purchasing. It's, again, a small company,  
4       so purchasing and advertising went together.  
5       I sort of had a knack more for advertising, I  
6       suppose.

7                       That company ended up getting bought  
8       by a company called Nationwide Automotive in '85 or  
9       so, '86. I think -- I would say '86.

10                      And I went to work for Nationwide --  
11       I'm leaving a couple of years out of here somehow.

12                      In any case, I moved to Columbus,  
13       Ohio. I ran Nationwide's advertising. They had  
14       three hundred stores, so it was a bit of a bigger  
15       deal.

16                      And then late in '89 I got a call  
17       from NAPA, and I went to work for NAPA in January  
18       of 1990.

19           Q.       Okay. They came to you?

20           A.       They did.

21           Q.       Okay.

22           A.       Somewhere in there I got a master's  
23       degree from Butler University. I just feel  
24       compelled to say that.

25           Q.       Okay. No. I would, too. It's

1 significant.

2 A. It's hard work when you are doing it  
3 at night.

4 Q. Sure.

5 And when would that have been that  
6 you got your master's degree?

7 A. '85.

8 Q. Okay. That was an MBA?

9 A. Yes.

10 Q. Okay.

11 THE WITNESS: Would it be okay if we  
12 took five?

13 MR. BRALY: Sure. Absolutely.

14 VIDEOGRAPHER: Off the record at  
15 10:55.

16

17 (SHORT RECESS)

18

19 VIDEOGRAPHER: Just a second,  
20 please.

21 Beginning video two of the 30(b)(6)  
22 of NAPA.

23 Back on the record. The time is  
24 11:03 AM.

25 Q. (BY MR. BRALY) We were talking about

1 your professional history. Your history with  
2 NAPA -- I want to start there in 1990, but I want  
3 to get a couple of things out of the way.

4 Have you ever worked in a  
5 Distribution Center for NAPA?

6 A. No.

7 Q. Or labeled NAPA?

8 A. I have not.

9 Q. All right. You have -- you have  
10 never had to stock shelves, handle product, be in a  
11 store front, anything of that sort as part of your  
12 job with NAPA, correct?

13 A. That's correct.

14 Q. Never a point of sales person or  
15 anything like that, correct?

16 MR. COLLIER: Object to the form.

17 A. Not with NAPA.

18 Q. Right.

19 Your career with NAPA -- what did  
20 you hire in as?

21 Can you kind of walk me through your  
22 career with NAPA.

23 A. Sure. I'm not sure I can label  
24 every year correctly.

25 But it's -- I was hired in as a

1 Retail Marketing Manager. So my responsibilities  
2 at that time primarily were around -- I mean, I was  
3 kind of an Army of one dealing with the retail  
4 business and trying to provide member companies and  
5 Distribution Centers with materials that would help  
6 them sell to the general public a bit more than --  
7 at that time it was very -- was very wholesale  
8 oriented. So my background is more retail.

9 So, you know, I provided sales  
10 suggestions, did point of purchase materials, put  
11 together promotions. And that -- there is -- it's  
12 kind of a gradual kind of a thing.

13 I have always been in the marketing  
14 and advertising the whole time I have been at NAPA.  
15 So it's just a matter of more responsibility along  
16 the way.

17 Q. Okay.

18 A. I got promoted to Director of Retail  
19 Marketing, then Vice-President of Marketing  
20 Strategy, and then eventually Senior Vice President  
21 of Marketing over the twenty-eight years.

22 Q. Would it be fair to say that using  
23 the kind of the parlance that you have been using  
24 as far as dividing NAPA and GPC here -- that NAPA,  
25 as NAPA -- primarily what they provide are

1 marketing-based solutions for member companies?

2 MR. COLLIER: Object to the form.

3 A. Yeah. I describe it as marketing  
4 programs and advertising.

5 Q. Okay. And that would include --  
6 when you say things like point of -- you used a  
7 phrase and I didn't --

8 A. Point of purchase.

9 Q. Point of purchase, yeah.

10 Like when you go into a NAPA branded  
11 store, and you see one of these poster boards that  
12 extols the virtues of some NAPA-branded product --  
13 that would be something that would originate from  
14 NAPA, correct?

15 MR. COLLIER: Object to the form.

16 A. That's something that the NAPA  
17 Marketing Department would do, yes.

18 Q. The product branded NAPA in that  
19 promotional literature would be a Genuine Parts  
20 Corporation product?

21 MR. COLLIER: Object to the form.

22 A. The NAPA branded product would come  
23 from a wide variety of manufacturers.

24 Q. Fair enough.

25 The NAPA branded product in the NAPA

1 promotional literature was not made by NAPA?

2 A. That's correct.

3 Q. NAPA's role is to create materials  
4 that will encourage people to buy more of the NAPA  
5 branded products?

6 MR. COLLIER: Object to the form.

7 A. Yeah, I think that's fair.

8 Q. That's always been part of what NAPA  
9 does, correct?

10 A. I guess as -- since my tenure at  
11 NAPA, primarily what we have done is provide  
12 marketing programs, advertising, platforms to try  
13 to make everybody feel better about the NAPA brand.  
14 The name -- be it recognized -- have it recognized,  
15 and so on.

16 Q. That would have been the role of  
17 NAPA in the 1970s as well?

18 MR. COLLIER: Object to the form.

19 A. As I understand it, yes.

20 Q. As you understand it, that would  
21 always be the role of NAPA is to encourage people  
22 to purchase more NAPA branded products?

23 A. Yes, that's one of their roles, for  
24 sure.

25 Q. Sure.



1                   That would be part of the method by  
2           which products are sold, fair, is the marketing  
3           component of selling those products?

4                   MR. COLLIER: Object to the form.

5           A.       Well, marketing -- you know, I'm a  
6           marketing guy.   So marketing always feel like they  
7           have a role in selling product.

8           Q.       Sure.

9           A.       Most things that are purchased in an  
10          auto parts store are -- people don't wake up in the  
11          morning thinking, "I can't wait to go buy that."  
12          It's a purchase that's a need purchase.

13                   So what we try to do from a NAPA  
14          advertising standpoint is raise a level of  
15          awareness so that people recognize the NAPA name  
16          and think about us in a positive way.   And so when  
17          their car has a need, they think of NAPA.

18          Q.       Okay. As far as the catchy  
19          television commercials that we have talked about  
20          and everything, that also originates from NAPA as  
21          NAPA, correct?

22          A.       That's correct.

23          Q.       That's not a Genuine Parts Company  
24          process; fair?

25          A.       It's a NAPA thing.

1           Q.       When you started in 1990, how many  
2 member companies were there of NAPA, other than  
3 Genuine Parts Company?

4           A.       I knew you were going to ask that.  
5 I believe there were five. There was Genuine  
6 Parts, there was NAPA Hawaii, there was Quaker City  
7 Motor Parts, there was Davis & Willmar, and there  
8 was Britten Brothers.

9           Q.       Geographically, NAPA Hawaii would  
10 have been regional to Hawaii?

11          A.       Yes.

12          Q.       We talked about Quaker City earlier  
13 kind of being the northern Mid-Atlantic area.

14                   Davis & Willmar -- did they have a  
15 regional area?

16          A.       Yeah. I think about them in  
17 Pennsylvania. I'm not positive that that is  
18 correct or not.

19                   But Davis & Willmar and Britten  
20 Brothers were pretty early on in my career there.  
21 And I don't really have a clear memory. Each had  
22 their own area.

23          Q.       Genuine Parts was the largest out of  
24 all of those, correct, as far as their role to play  
25 in the overall NAPA picture?

1           A.       Yes. They had the most Distribution  
2       Centers and the most volume.

3           Q.       They had a national Distribution  
4       Center network, correct?

5                   MR. COLLIER: Object to the form.

6           A.       Well, not really national because  
7       some of these other member companies had  
8       Distribution Centers.

9                   So, I mean, Genuine Parts would have  
10       a Distribution Center, say, where Quaker City had a  
11       Distribution Center.

12          Q.       So that was my next question.

13                   If there was geographic overlap you  
14       couldn't have competing NAPA branded Distribution  
15       Centers between Quaker City and Genuine Parts, for  
16       example; is that right?

17                   MR. COLLIER: Object to the form.

18          A.       I mean, you are getting into some  
19       Genuine Parts Company type questions.

20                   But my understanding is that there  
21       was sort of a -- I don't know if it was written or  
22       unwritten -- but basically, "Hey, this is a  
23       Distribution Center here, this is basically my  
24       area, that's where we are going to distribute at."

25                   There wouldn't be overlap. You

1 wouldn't have member companies competing with each  
2 other in a territory.

3 Q. It is correct that NAPA never  
4 endeavored to provide any kind of cautionary  
5 statements, warning statements, or anything like  
6 that to Genuine Parts Company or any of their other  
7 member companies or to any of their marketing  
8 information about potential hazards associated with  
9 asbestos; is that fair?

10 MR. COLLIER: Object to the form.

11 A. That's not really NAPA's role. I  
12 mean, NAPA is not in the distribution chain. So it  
13 would be correct to say that NAPA didn't have a  
14 role in that.

15 Q. They never did that, correct --

16 MR. COLLIER: Object to the form.

17 Q. -- to your knowledge?

18 A. To my knowledge, no.

19 Q. The funding for marketing events --  
20 like what we talked about with the auto racing and  
21 everything else -- that's funding that comes from  
22 NAPA, not GPC, correct?

23 MR. COLLIER: Object to the form.

24 Q. Like NAPA pays for that?

25 A. That's correct.

1 Q. Through the revenue streams that we  
2 talked about before, which include revenue streams  
3 from GPC?

4 A. That's correct.

5 Q. All right. I have a series of kind  
6 of yes or no questions that deal with documents. I  
7 kind of want to have a better scope of what NAPA  
8 would have and what they don't.

9 Does NAPA have any documents related  
10 to sales of products through Distribution Centers  
11 that are branded as NAPA Distribution Centers?

12 MR. COLLIER: Object to the form.

13 A. Talking currently?

14 Q. No. For the 1970s or '80s.

15 A. No.

16 Q. What about currently?

17 A. So we get information about what a  
18 Distribution Center sells out monthly that the  
19 members report into us.

20 In this case, obviously, one member,  
21 Genuine Parts. So we have information about who  
22 they sell and how much they sell.

23 Q. Specific stocking information, how  
24 much a Distribution Center orders from suppliers,  
25 how much moves out the door, or what

1 specifically -- kind of a breakdown of how much  
2 goes out the door.

3 Is that information -- that level of  
4 detail sufficient -- information that is provided  
5 to NAPA or that NAPA has?

6 A. Not NAPA and our thirteen employees.  
7 That's definitely something that Genuine Parts  
8 Company would have and keep track of. And the  
9 right people would have that information; but, I  
10 mean, we wouldn't have it.

11 Q. NAPA provides marketing information  
12 to stores, including suggested store layouts and  
13 store signage, correct?

14 MR. COLLIER: Object to the form.

15 A. No. There is -- you are talking  
16 about like planograms and things like that. That's  
17 a Genuine Parts Company function that they deal  
18 with their stores.

19 Q. NAPA provides signage -- we have  
20 already talked about this -- correct?

21 MR. COLLIER: Object to the form.

22 A. Point of purchase sales signage.

23 Q. What about the great big sign on the  
24 outside, the giant blue and yellow octagonal NAPA  
25 sign; who provides that?

1           A.       I mean, that's a third party,  
2 obviously. I mean, NAPA doesn't provide it, nor  
3 does Genuine Parts. They are buying it from some  
4 third party.

5                   The only part NAPA would have played  
6 in that a long time ago would have been the design.

7           Q.       Just as basic trademark issues, NAPA  
8 licenses that logo to other people to manufacture?

9                   MR. COLLIER: Object to the form.

10          A.       NAPA licenses suppliers to utilize  
11 the NAPA logo, yes.

12          Q.       When you say suppliers, I just want  
13 to make sure we are talking about the same thing.

14                   You mean like sign suppliers?

15          A.       I'm not sure about that, to be  
16 honest with you. The products that are sold  
17 through Distribution Centers -- I have knowledge of  
18 that. But I'm not positive about whether a sign  
19 manufacturer -- how that works exactly.

20          Q.       Okay. NAPA maintains records of the  
21 six thousand or so NAPA branded stores in the  
22 United States, do they not?

23                   MR. COLLIER: Object to the form.

24          A.       Genuine Parts Company maintains  
25 records as our remaining member of those stores and

1 where they are located at and who they are served  
2 by. We can have access to those -- that  
3 information.

4 Q. Okay. And, as far as you know,  
5 that's the same setup if we are talking about the  
6 '60s or '70s as well; is that right?

7 A. Yeah. The only difference in the  
8 '60s and '70s is there would have been other member  
9 companies. And they would have kept track of the  
10 stores they serviced and -- you know.

11 Q. But for a jurisdiction or a region  
12 like Arkansas -- where Genuine Parts Company was  
13 the member company for NAPA in that area -- that  
14 information -- at least to your contention -- would  
15 have to come from Genuine Parts Company; is that  
16 correct?

17 A. That's right, because Genuine Parts  
18 Company is the distributor and the store is the  
19 customer. So they have the relationship.

20 Q. Who owns NAPA?

21 MR. COLLIER: Object to the form.

22 Q. Are there a series of stockholders,  
23 is it one person, is it a company?

24 A. Nobody owns NAPA. It's an  
25 association.



1 Q. As a legally formed entity, there  
2 are no stockholders or ownership rights of NAPA?

3 A. Not that I'm aware of.

4 Q. Okay. Give me a second.

5 (Pause)

6 MR. BRALY: Tom, do you have  
7 questions?

8 MR. RADCLIFFE: I do not.

9 MR. BRALY: Can we take a break for  
10 five minutes and let me go over a couple of things.

11 I was going to use Tom's time to do  
12 that. I might be close to being finished.

13 VIDEOGRAPHER: Off the record at  
14 11:20.

15  
16 (SHORT RECESS)

17  
18 VIDEOGRAPHER: Back on the record.

19 11:28.

20 Q. (BY MR. BRALY) Mr. Spencer, I wanted  
21 to ask you again about this affidavit that you  
22 authored, I guess, a couple of years ago. It's  
23 Exhibit Number 5.

24 In it you make the statement -- I  
25 asked you about this earlier. "NAPA does not

1 receive any direct financial payment from the sale  
2 of any particular automotive part."

3 NAPA does receive financial payment  
4 as a percentage of the overall receipts that GPC  
5 receives or that the member companies wish to turn  
6 in; fair?

7 MR. COLLIER: Object to the form.

8 A. Well, if I understand the document,  
9 it says direct -- receive any direct financial  
10 payment. So I would interpret that as no, we don't  
11 receive direct financial payment.

12 Q. Right.

13 Just to kind of drill down on the  
14 phrase and how this works.

15 If GPC sells a lot of stuff, it  
16 makes a lot of profit. NAPA would be the  
17 beneficiary of that through the percentage payment  
18 that they get from GPC, correct?

19 MR. COLLIER: Object to the form.

20 A. If it sells a lot of stuff we would  
21 receive some benefit because the more that is sold,  
22 potentially, the greater the ad allowance would be.

23 Q. Not potentially; it would be  
24 greater, correct?

25 MR. COLLIER: Object to the form.

1           A.       Well, I have to say potentially  
2       because that percentage could go up or down of what  
3       the amount is. It's not necessarily always the  
4       same.

5           Q.       What is the current ad percentage  
6       from GPC?

7                   MR. COLLIER: Object to the form.

8           A.       Are you talking about from stores?

9           Q.       No. From GPC directly to NAPA.

10                  MR. COLLIER: Object to the form.

11          A.       There is no GPC directly. There is  
12       member dues.

13          Q.       Well, then, tell me about the member  
14       dues.

15          A.       The member dues is five hundred  
16       thousand.

17          Q.       Okay. So each -- if I drive by and  
18       I see a NAPA store in my neighborhood, that store  
19       is contributing five hundred thousand?

20                  MR. COLLIER: Object to the form.

21          Q.       Do you want to illustrate this for  
22       me a little bit.

23          A.       Sure.

24                  A store buys product from a NAPA --  
25       from a Genuine Parts Company Distribution Center.

1 They have -- they have the ability -- and most  
2 do -- pay into the Distribution Center a percentage  
3 of the prior year purchases into GPC for  
4 advertising. We view it as national advertising.

5 That amount can change, but it's a  
6 percentage of the prior year purchases.

7 Q. So where did this five hundred  
8 thousand number come from?

9 What is that?

10 A. That's member dues. So member  
11 dues -- we have to reflect back when we had a lot  
12 of members. Each -- the cost of NAPA -- a big part  
13 of it -- was assessed -- because NAPA has no  
14 revenue, really.

15 So the money that we had to run NAPA  
16 came from member dues. So we assessed members some  
17 money each year to run NAPA.

18 Q. You are saying that's currently five  
19 hundred thousand?

20 A. Right.

21 Q. That's the number that GPC pays to  
22 NAPA?

23 A. Yes.

24 Q. Where do the rest of the millions of  
25 the dollars come from for all the rest of the

1 marketing?

2 A. The two revenue streams --

3 MR. COLLIER: Object to the form.

4 A. The two revenue streams I spoke of  
5 before, primarily.

6 Q. Right.

7 And one of those were stores  
8 contributing to a marketing fund at the local DCs,  
9 right?

10 A. Yes.

11 Q. The other one, I took it to mean,  
12 was a percentage of the overall sales that Genuine  
13 Parts does?

14 A. This comes from suppliers. So  
15 suppliers, one stream; stores, one stream.

16 Q. Right. So if suppliers are selling  
17 more product through the Genuine Parts affiliated  
18 distribution network, that benefits NAPA  
19 financially, correct?

20 A. Yes.

21 Q. Okay. So movement of sales in that  
22 chain of distribution has a financial impact on  
23 what NAPA is able to do with the money they have;  
24 is that correct?

25 MR. COLLIER: Object to the form.

1           A.           Yes.

2                   MR. BRALY: I'm going to pass the  
3       witness at this time.

4                   MR. COLLIER: Nothing further.

5                   Let's go off the record for just a  
6       minute. Now I want to take a five-minute break.

7                   VIDEOGRAPHER: Off the record at  
8       11:32.

9  
10                   (SHORT RECESS)

11  
12                   VIDEOGRAPHER: Just a second,  
13       please.

14                   Back on the record at 11:36.

15                   MR. COLLIER: This is Chris Collier  
16       on behalf of National Automotive Parts Association.  
17       And I don't have any questions at this point in  
18       time.

19                   We can go off the record.

20                   VIDEOGRAPHER: End of video two.  
21       11:36 AM.

22  
23                   (Signature reserved)

REPORTER DISCLOSURES

The following representations and disclosures are made in compliance with Georgia Law, more specifically:

Article 10(B) of the Rules and Regulations of the Board of Court Reporting (disclosure forms)

OCGA section 9-11-28(c) (disqualification of reporter for financial interest)

OCGA sections 15-14-37 (a) and (b) (prohibitions against contracts except on case-by-case basis)

I am a certified court reporter in the State of Georgia.

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12 complete record of the colloquies, questions and  
13 answers as submitted by the certified court  
14 reporter.

15 Exhibits: No changes will be made to the  
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17 witnesses.

18 Password-Protected Access: Transcripts  
19 and exhibits relating to this proceeding will be  
20 uploaded to a password-protected repository, to  
21 which all ordering parties will have access.



C E R T I F I C A T E

I hereby certify that the above and foregoing deposition was taken down, as stated in the caption, and the colloquies, the questions and answers thereto were transcribed by means of computer-aided transcription, that the transcript is a true and correct record of the evidence given upon said proceeding me.

I have no relationship of interest in this matter which would disqualify me from maintaining my obligation of impartiality in compliance with the Code of Professional Ethics.

I have no direct contract with any party in this action and my compensation is based solely on the terms of my subcontractor agreement.

Nothing in the arrangements made for this proceeding impacts my absolute commitment to serve all parties as an impartial officer of the court.

DAVID L. MILLER, LCR, CCR, RPR, RMR



Alabama License #347

Georgia License #6322-0018-0740-9152

WITNESS' NAME: Gaylord Spencer - NAPA

[illegible]

OF \_\_\_\_\_, 2018.

MY COMMISSION EXPIRES

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August 6, 2018

To: J. Dennis Chambers, Esq.

Case Name: Thomas, Ronald v. Asbestos/NAPA

Veritext Reference Number: 2968250

Witness: Gaylord Spencer - NAPA

Deposition Date: 8/2/2018

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature at the bottom of the sheet notarized except in California where they are signing under penalty of perjury and forward the errata sheet back to us at the address shown above.

If the jurat is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

Encl.

Cc: All Counsel

[&amp; - amount]

Page 1

<b>&amp;</b>	<b>200</b> 1:21 3:15 6:5 6:17	<b>6</b>	<b>access</b> 28:14,25 32:2,14,20 63:2 71:18,21
<b>&amp;</b> 3:4,12 4:4,21 5:5,10,12 16:24 57:7,14,19	<b>2018</b> 1:18 6:7,15 73:22 74:4	<b>6</b> 1:17 2:13,18 6:21 30:23,25 31:2 51:21 74:4	<b>accurate</b> 20:20 70:17
<b>0</b>	<b>21201</b> 4:17	<b>60s</b> 63:6,8	<b>acquiring</b> 44:6
<b>00522</b> 1:6	<b>22</b> 2:16	<b>6322-0018-0740...</b> 72:25	<b>acting</b> 6:2
<b>07039</b> 74:2	<b>2300</b> 3:16	<b>7</b>	<b>action</b> 1:5 70:24 72:14
<b>1</b>	<b>24</b> 2:17	<b>7</b> 2:4,19 39:23,25	<b>actual</b> 43:10
<b>1</b> 2:13 8:7,12	<b>290</b> 74:1	<b>70</b> 2:5	<b>ad</b> 37:9,20,24 38:16,19 65:22 66:5
<b>10</b> 70:5	<b>2968250</b> 1:25 74:7	<b>70s</b> 63:6,8	<b>add</b> 44:5
<b>1075</b> 5:18	<b>2nd</b> 6:15	<b>718-983-1234</b> 73:2	<b>addition</b> 33:21
<b>10:02</b> 6:15	<b>3</b>	<b>72</b> 2:6	<b>address</b> 21:20 74:14
<b>10:03</b> 1:19 6:7	<b>3</b> 2:15 19:10,14	<b>72201</b> 3:17,25	<b>advertising</b> 36:1 39:5 50:4,5,13 53:14 54:4 55:12 56:14 67:4,4
<b>10:55</b> 51:15	<b>30</b> 1:17 2:13 6:21 51:21	<b>75202</b> 3:8	<b>affidavit</b> 2:17 64:21
<b>11:03</b> 51:24	<b>300</b> 3:7	<b>75205</b> 4:9	<b>affidavits</b> 23:25
<b>11:20</b> 64:14	<b>302</b> 3:6	<b>75505</b> 5:8	<b>affiliated</b> 49:14 68:17
<b>11:28</b> 64:19	<b>303</b> 4:23	<b>8</b>	<b>affiliation</b> 12:13
<b>11:32</b> 69:8	<b>30308-3243</b> 4:25	<b>8</b> 2:13,14,20 42:2	<b>ago</b> 41:8 62:6 64:22
<b>11:36</b> 69:14,21	<b>30309</b> 5:20	<b>8.b</b> 5:23	<b>agreement</b> 70:25 71:5 72:15
<b>1400</b> 4:16	<b>31</b> 2:18	<b>8/2/2018</b> 73:3 74:9	<b>aided</b> 72:6
<b>15-14-37</b> 70:10 71:6	<b>3200</b> 74:1	<b>800-227-8440</b> 74:2	<b>al</b> 1:11 6:19
<b>1710</b> 5:7	<b>3400</b> 3:23	<b>80s</b> 60:14	<b>alabama</b> 72:24
<b>19</b> 2:15	<b>347</b> 72:24	<b>81</b> 49:21	<b>allowance</b> 37:20 37:24 38:17,19 65:22
<b>1925</b> 15:1	<b>36</b> 4:15	<b>85</b> 50:8 51:7	<b>alston</b> 5:12
<b>1928</b> 15:23,24,25	<b>3625</b> 5:19	<b>86</b> 50:9,9	<b>amount</b> 35:24 36:15 39:4,10 66:3 67:5
<b>1929</b> 15:21	<b>39</b> 2:19	<b>89</b> 50:16	
<b>1960</b> 17:14	<b>4</b>	<b>9</b>	
<b>1970s</b> 21:16 27:11 27:15,22 44:22 55:17 60:14	<b>4</b> 2:16 22:8,10	<b>9-11-28</b> 70:8	
<b>1977</b> 47:21,22 48:2	<b>4000</b> 4:24	<b>973-629-1287</b> 74:2	
<b>1979</b> 22:2	<b>42</b> 2:20	<b>a</b>	
<b>1980</b> 17:14	<b>425</b> 3:24	<b>a.m.</b> 1:19 6:7	
<b>1990</b> 17:10 47:6,22 50:18 52:2 57:1	<b>4514</b> 4:7	<b>abex</b> 4:12	
<b>2</b>	<b>4:17</b> 1:6	<b>ability</b> 67:1	
<b>2</b> 1:18 2:14 6:7 8:17,21	<b>5</b>	<b>able</b> 29:2 32:10 68:23	
	<b>5</b> 2:17 24:10,19 64:23	<b>absolute</b> 72:17	
	<b>500</b> 4:8	<b>absolutely</b> 51:13	
	<b>501</b> 35:14		

[amy - branded]

Page 2

<b>amy</b> 18:19 <b>ann</b> 45:7,10 <b>annual</b> 22:3 <b>answer</b> 22:21 24:22 33:5 <b>answered</b> 26:7 <b>answering</b> 28:20 <b>answers</b> 71:13 72:5 <b>application</b> 45:19 <b>applied</b> 71:7 <b>applying</b> 45:21 <b>appropriate</b> 48:22 <b>approximate</b> 11:7 <b>approximately</b> 6:7 9:24 11:6 <b>area</b> 16:12,14,17 16:21 57:13,15,22 58:24 63:13 <b>areas</b> 16:25 <b>arizona</b> 23:1 <b>arkansas</b> 1:2 3:17 3:25 14:12 21:15 26:2 27:2,21 44:21 63:12 <b>army</b> 53:3 <b>arrangements</b> 72:16 <b>article</b> 5:23 70:5 <b>asbestos</b> 9:21 10:14 25:13,15 26:2,5 59:9 73:3 74:6 <b>aside</b> 42:5 <b>asked</b> 14:9 21:13 26:7 41:5 64:25 <b>asky</b> 12:1 <b>asking</b> 35:4,6 <b>aspects</b> 38:9 <b>assessed</b> 67:13,16	<b>assigned</b> 70:16 <b>assignment</b> 73:2 <b>associated</b> 10:25 14:10 31:11 36:25 37:4 59:8 <b>association</b> 7:22 10:18 12:17,18 13:2 15:17,22 16:2,7 28:2,11,11 28:12 29:4 63:25 69:16 <b>association's</b> 24:15 <b>atchley</b> 5:5 <b>atlanta</b> 1:20,22 4:25 5:20 6:5,6,18 19:1 70:16 71:2 <b>atlantic</b> 16:14 57:13 <b>attached</b> 8:12,21 19:14 22:10 24:19 30:25 39:25 42:2 <b>attend</b> 47:13 <b>attorney</b> 71:4 <b>attorneys</b> 7:21 13:1 71:16 <b>august</b> 1:18 6:7,14 74:4 <b>authored</b> 23:25 64:22 <b>auto</b> 16:6 28:13,24 33:15 48:4 49:4 49:23 56:10 59:20 <b>automatically</b> 71:7 <b>automotive</b> 7:22 10:17 12:17 13:2 15:4,22 16:2,7 24:14 25:7 37:7 50:8 65:2 69:16	<b>ave</b> 74:1 <b>avenue</b> 3:15,24 4:7 <b>aware</b> 14:20 27:23 34:8,12 39:17,20 39:21 40:8,11 41:17,21 64:3 <b>awareness</b> 36:25 56:15 <b>awesome</b> 19:18 <b>awhile</b> 48:18	<b>beneficiary</b> 65:17 <b>benefit</b> 36:2 38:24 65:21 <b>benefits</b> 68:18 <b>better</b> 15:10 55:13 60:7 <b>beutler</b> 18:20 <b>beyond</b> 16:17 <b>big</b> 61:23 67:12 <b>bigger</b> 50:14 <b>biographies</b> 22:15 <b>bird</b> 5:12 <b>bit</b> 25:11 33:7 43:20 47:5,11 50:14 53:6 66:22 <b>blue</b> 27:7 61:24 <b>board</b> 5:24 12:5 12:10,19 70:6 <b>boards</b> 54:11 <b>borg</b> 1:11 6:19 <b>bottom</b> 74:13 <b>bought</b> 50:7 <b>brake</b> 26:3 <b>brakes</b> 25:14,15 <b>braly</b> 2:4 3:5 6:24 6:24 7:13,15 9:2 9:12,15 24:8,9,23 24:25 35:5,9 42:15,19,22 43:5 51:13,25 64:6,9,20 69:2 <b>brand</b> 23:24 36:3 55:13 <b>branded</b> 25:12 26:1,9 29:1 32:15 32:19 34:9 35:25 38:1 39:1 45:17 54:10,12,18,22,25 55:5,22 58:14 60:11 62:21
--	--	--	--

[branham - commission]

Page 3

<b>branham</b> 3:4 <b>break</b> 64:9 69:6 <b>breakdown</b> 61:1 <b>brewer</b> 45:7 <b>brewer's</b> 45:11 <b>britten</b> 57:8,19 <b>broader</b> 20:4 <b>brothers</b> 57:8,20 <b>brown</b> 5:17 6:13 <b>bsm</b> 1:6 <b>burlie</b> 1:8 <b>business</b> 15:5 26:18 32:7 49:3 53:4 <b>butler</b> 50:23 <b>buy</b> 44:17 55:4 56:11 <b>buyer</b> 48:17,17,25 49:18 <b>buying</b> 62:3 <b>buys</b> 66:24 <b>byron's</b> 13:20	<b>career</b> 52:19,22 57:20 <b>careers</b> 20:18 22:12 45:19 <b>carry</b> 27:7 <b>carrying</b> 27:20 <b>casas</b> 23:3 <b>case</b> 24:15 25:22 34:7 50:12 60:20 70:11,12 71:6 73:3 74:6 <b>cases</b> 10:4,6,7,12 <b>catchy</b> 36:23 56:18 <b>cause</b> 6:8 <b>cautionary</b> 59:4 <b>cc</b> 74:25 <b>ccr</b> 1:24 72:20 <b>cedarville</b> 47:16 47:16 48:2 <b>center</b> 17:2 21:15 21:19,21 26:12 27:17 29:1,2,14,14 29:18,19,20 30:1,2 30:6 32:6 33:9,16 34:5 43:18,21,22 44:1,2,3,13,18,21 45:4,17,20 46:15 52:5 58:4,10,11,23 60:18,24 66:25 67:2 <b>centers</b> 16:20 18:2 18:6,7,9 20:9,16 21:11 25:12,20,21 26:1,9,18,22 27:20 28:1 32:15,21,24 32:24 33:22 39:1 46:20,21,22,24 53:5 58:2,8,15 60:10,11 62:17	<b>certificate</b> 2:6 <b>certified</b> 70:13 71:13 <b>certify</b> 6:2 72:2 <b>cetera</b> 36:10 <b>chain</b> 46:6,15 59:12 68:22 <b>chairman</b> 11:8 12:2 <b>chambers</b> 5:6 74:5 <b>chance</b> 14:13 <b>change</b> 67:5 73:5 74:12,13 <b>changes</b> 71:15 74:12 <b>characterize</b> 20:13 <b>charles</b> 4:15 <b>chase</b> 40:5,24 <b>check</b> 30:12 32:2 <b>chris</b> 69:15 <b>christopher</b> 4:22 <b>circuit</b> 40:5,25 43:13 <b>circuits</b> 39:12 <b>city</b> 16:6,23 31:13 57:6,12 58:10,15 <b>civil</b> 1:5 6:3 <b>claim</b> 20:25 24:1 <b>classify</b> 37:19 <b>clear</b> 57:21 <b>close</b> 64:12 <b>clutches</b> 25:14,15 <b>code</b> 35:15 70:22 72:12 <b>coey</b> 13:19 45:9 <b>coffee</b> 48:10 <b>cole</b> 4:7 <b>collecting</b> 44:6 <b>college</b> 47:13,16 <b>collier</b> 4:22 8:25 9:4,14 11:23 12:6	12:15 13:24 14:15 16:9,18 17:5,8,15 18:4 19:11,25 20:3,17 21:1,8,25 22:19 23:9,20 24:6,12,21 25:17 26:6,24 27:4,12 28:6,16 29:7,22 30:15 31:5,18 32:5,16,22 33:12 33:19,24 35:3 37:2,12 38:15 39:6,18 40:21 41:3,18 42:11,17 42:20,24 43:6,15 43:25 44:10,23 45:2,23 46:8 47:1 52:16 54:2,15,21 55:6,18 56:4 58:5 58:17 59:10,16,23 60:12 61:14,21 62:9,23 63:21 65:7,19,25 66:7,10 66:20 68:3,25 69:4,15,15 <b>colloquies</b> 71:12 72:4 <b>columbus</b> 50:12 <b>column</b> 31:10 <b>come</b> 14:21 35:19 35:22 54:22 63:15 67:8,25 <b>comes</b> 35:21 37:9 37:21 42:16 59:21 68:14 <b>coming</b> 30:18 <b>commencing</b> 6:6 <b>commercials</b> 56:19 <b>commission</b> 73:25
<b>c</b>			
<b>c</b> 3:1 4:1 5:1 22:25 35:14 70:8 72:1,1 <b>california</b> 73:21 74:13 <b>call</b> 3:14,22 4:6 5:11,13 30:3 33:15 37:20 43:9 48:16 50:16 <b>called</b> 8:9 24:16 28:8,9 46:21 48:3 50:8 <b>campaign</b> 37:9 <b>capacity</b> 35:4,6 <b>capitol</b> 3:15,24 <b>caption</b> 72:4 <b>car</b> 40:24 42:9,9 43:2 56:17			

[commissioner - depends]

Page 4

<b>commissioner</b> 6:2 <b>commitment</b> 72:17 <b>companies</b> 16:19 17:17 22:2 25:19 28:19 32:14,17 53:4 54:1 57:2 58:7 59:1,7 63:9 65:5 <b>company</b> 3:11 10:21 12:5,11,14 12:16,23 13:10 15:18,21 17:20,24 18:5,8 21:9,22,24 23:7,14,17,19,23 25:23 26:21 27:1 33:23,25 34:10 36:13 37:22 38:4 38:4 45:4,6,22 46:1,2 48:3 50:2,3 50:7,8 56:23 57:3 58:19 59:6 61:8 61:17 62:24 63:12 63:13,15,18,23 66:25 <b>compelled</b> 50:24 <b>compensation</b> 10:23 12:23 70:24 72:14 <b>competing</b> 58:14 59:1 <b>complete</b> 70:16 71:12 <b>completely</b> 20:20 48:21 <b>compliance</b> 70:3 70:22 72:12 <b>component</b> 56:3 <b>computer</b> 72:6 <b>concern</b> 10:3	<b>concludes</b> 9:11 <b>conference</b> 3:14 3:22 4:6 5:11,13 <b>connotation</b> 20:5 <b>consolidate</b> 44:15 <b>consumers</b> 37:5 <b>contact</b> 29:3,13,18 <b>contacted</b> 71:2 <b>containing</b> 25:13 25:15 26:3,5 <b>contention</b> 46:18 63:14 <b>contents</b> 12:25 <b>context</b> 9:21 10:13 <b>continental</b> 15:8 <b>continue</b> 49:25 <b>contract</b> 70:23 72:13 <b>contracts</b> 70:11 <b>contribute</b> 36:1 <b>contributing</b> 66:19 68:8 <b>conversationally</b> 11:16 <b>conversations</b> 13:1 <b>coogan</b> 24:16 <b>cooperative</b> 28:4 <b>copy</b> 19:11 <b>corporate</b> 7:23 9:19 10:17 11:2 47:3 48:17 <b>corporation</b> 15:1 35:10 46:23 54:20 <b>correct</b> 10:18,25 11:1 14:6 15:18 15:22 16:2,4,8,10 16:14,15 17:22,23 18:3 20:9 25:16 26:5,12,13,14 27:8 27:11 28:15 29:8	29:9 30:10 32:15 33:6,18,20,23 35:11,12 36:18 38:2,5,7,10 39:5 39:17 40:6,7,10 47:8 52:12,13,15 54:14 55:2,9 56:21,22 57:18,24 58:4 59:3,13,15,22 59:25 60:4 61:13 61:20 63:16 65:18 65:24 68:19,24 71:11 72:7 <b>corrections</b> 74:12 <b>correctly</b> 52:24 <b>cost</b> 40:18 43:14 67:12 <b>costs</b> 31:11 <b>council</b> 5:24 <b>counsel</b> 6:22 74:25 <b>country</b> 16:21,24 17:1 22:16 <b>county</b> 24:16 <b>couple</b> 9:1 14:3 18:22 41:7 42:21 42:23 48:15,24 50:11 52:3 64:10 64:22 <b>course</b> 48:20 <b>court</b> 1:1,24 5:24 7:2,4,6 70:6,13 71:13 72:18 73:1 <b>covered</b> 16:11 <b>create</b> 55:3 <b>cup</b> 40:4,20 <b>current</b> 66:5 <b>currently</b> 15:16 18:1 60:13,16 67:18 <b>customer</b> 63:19	<b>cut</b> 49:17 <b>cv</b> 1:6 <b>d</b> <b>d</b> 2:1 3:5 <b>dallas</b> 3:8 4:9 28:24 29:11 30:13 31:14 32:6 34:4 <b>dan</b> 12:1 <b>date</b> 6:3,14 73:3 74:9 <b>david</b> 1:24 6:1 7:3 72:20 <b>davis</b> 16:24 57:7 57:14,19 <b>day</b> 15:25 73:22 <b>days</b> 74:16 <b>dc</b> 22:4 23:14 38:1 <b>dcs</b> 37:21 68:8 <b>deal</b> 50:15 60:6 61:17 <b>dealing</b> 30:20 31:3 39:16 53:3 <b>dean</b> 3:4 <b>dear</b> 74:10 <b>decades</b> 40:12 <b>declaration</b> 24:13 <b>deemed</b> 74:17 <b>default</b> 23:16 <b>defendant</b> 1:12 3:11,19 4:3,12,20 <b>defendants</b> 5:4 <b>definitely</b> 61:7 <b>degree</b> 47:18 49:2 50:23 51:6 <b>dehay</b> 4:13 <b>delaware</b> 16:13 <b>dennis</b> 5:6 74:5 <b>department</b> 54:17 74:22 <b>depends</b> 39:7
--	---	---	---



[depo - exhibits]

Page 5

<b>depo</b> 2:13 <b>deposition</b> 1:16 2:14 6:16 7:24 8:10,18 9:10,16,18 9:25 13:4,23 14:9 20:14 21:13 34:15 34:18 41:20 42:13 45:8,11,13 72:3 73:3 74:9,11 <b>depositions</b> 13:5,8 13:9,18 <b>describe</b> 14:23 16:20 54:3 <b>described</b> 33:4 <b>design</b> 62:6 <b>designated</b> 7:21 <b>detail</b> 61:4 <b>determine</b> 39:8 <b>determined</b> 70:24 <b>devoted</b> 22:14 <b>difference</b> 63:7 <b>different</b> 44:14 <b>direct</b> 25:6 65:1,9 65:9,11 70:23 72:13 <b>directly</b> 12:23 23:6 66:9,11 <b>director</b> 53:18 <b>disagreement</b> 34:25 <b>disclosure</b> 2:5 5:22 70:7 <b>disclosures</b> 70:1,3 71:1 <b>discount</b> 71:9 <b>discounts</b> 71:7 <b>discuss</b> 29:6 35:1 <b>display</b> 29:12 35:23 <b>dispute</b> 46:4	<b>disqualification</b> 70:8 <b>disqualify</b> 70:20 72:10 <b>distribute</b> 14:8 17:1 20:15 58:24 <b>distributed</b> 25:13 25:23 26:2 <b>distributes</b> 44:3 <b>distribution</b> 16:20 17:2 18:2,6,7,9 20:9,16 21:11,14 21:18,20 22:2 25:12,20,21 26:1,9 26:12,17,21 27:17 27:20 28:1,14 29:1,2,13,14,18,19 29:20 30:1,2,6 32:2,6,15,21,24,24 33:9,15,21 34:5 39:1 43:18,21,22 44:1,2,3,13,17,21 45:4,17,20 46:6,13 46:14,19,21,22,23 52:5 53:5 58:1,3,8 58:10,11,14,23 59:12 60:10,11,18 60:24 62:17 66:25 67:2 68:18,22 <b>distributor</b> 63:18 <b>distributors</b> 15:9 15:15 <b>district</b> 1:1,2 <b>dividing</b> 53:24 <b>division</b> 1:3 <b>document</b> 8:8,11 8:14,20 19:13 22:9 24:18 30:24 39:24 42:1 65:8 <b>documents</b> 14:10 14:11,14,16,17,18	14:19 34:13 60:6 60:9 <b>doing</b> 8:9 10:9 51:2 <b>dollars</b> 30:14 31:16 41:15 43:17 67:25 <b>donahue</b> 12:2 <b>door</b> 27:1 60:25 61:2 <b>drill</b> 65:13 <b>drive</b> 66:17 <b>driven</b> 46:1 <b>driver</b> 40:5 41:7 <b>dues</b> 66:12,14,15 67:10,11,16 <b>duly</b> 7:10  <b>e</b>  <b>e</b> 2:1 3:1,1 4:1,1 5:1,1 22:25,25 72:1,1 <b>earlier</b> 57:12 64:25 <b>early</b> 57:20 <b>easier</b> 15:10 <b>eastern</b> 1:2 <b>effect</b> 24:2 <b>eight</b> 31:22 43:16 53:21 <b>either</b> 12:3 34:21 <b>elliott</b> 40:5 <b>elliott's</b> 40:24 <b>elliston</b> 4:13 <b>emily</b> 18:20 <b>employee</b> 10:20 21:3 <b>employees</b> 18:10 19:18 23:10,17 30:8,8 61:6 <b>encl</b> 74:24	<b>enclosed</b> 74:11 <b>encourage</b> 55:4,21 <b>endeavored</b> 59:4 <b>ended</b> 50:7 <b>entirely</b> 22:13 <b>entity</b> 26:18 64:1 <b>erika</b> 23:3 <b>errata</b> 73:1 74:12 74:14 <b>esq</b> 3:5,13,21 4:5 4:14,22 5:6,11,13 74:5 <b>establish</b> 30:21 <b>established</b> 41:12 <b>establishes</b> 8:8 <b>estimate</b> 32:12 <b>et</b> 1:11 6:19 36:10 <b>ethics</b> 70:22 72:12 <b>events</b> 59:19 <b>eventually</b> 48:13 50:2 53:20 <b>everybody</b> 6:25 55:13 <b>evidence</b> 72:7 <b>exact</b> 21:19 <b>exactly</b> 62:19 <b>examination</b> 2:3 6:9 7:13 <b>examined</b> 7:10 <b>example</b> 16:6 32:7 34:4 40:3 58:16 <b>exclusively</b> 33:22 <b>exhibit</b> 2:13,14,15 2:16,17,18,19,20 8:7,12,17,21 19:10 19:14 22:8,10 24:10,19 30:23,25 31:2 39:23,25 42:2 64:23 <b>exhibits</b> 2:11,12 71:15,16,19
---	--	--	--



[exist - gpc]

Page 6

<b>exist</b> 14:17 <b>existing</b> 29:13 <b>experience</b> 34:23 47:23 <b>expires</b> 73:25 <b>explain</b> 37:13 <b>explained</b> 11:14 <b>extend</b> 16:17 <b>extols</b> 54:12	<b>financially</b> 68:19 <b>find</b> 44:25 74:11 <b>fine</b> 6:25 9:13 38:18 39:22 42:19 <b>finished</b> 64:12 <b>firm</b> 3:20 71:1 <b>first</b> 7:10 9:6 37:16 <b>five</b> 51:12 57:5 64:10 66:15,19 67:7,18 69:6 <b>fixtures</b> 32:11 <b>follow</b> 48:24 <b>following</b> 6:9 70:2 <b>follows</b> 7:11 <b>ford</b> 3:11 <b>foregoing</b> 72:3 <b>form</b> 9:5 11:23 12:6,15 13:24 14:15 15:9 16:9 16:18 17:5,15 18:4 19:25 20:3 20:17 21:1,8,25 22:19 23:9,20 24:6 25:17 26:6 26:24 27:4,12 28:6,16 29:7,22 30:15 31:18 32:5 32:16,22 33:12,19 33:24 35:3 36:5 37:2,12 38:15 39:6,18 40:21 41:3,19 42:11 43:25 44:10,23 45:2,23 46:8 47:1 52:16 54:2,15,21 55:6,18 56:4 58:5 58:17 59:10,16,23 60:12 61:14,21 62:9,23 63:21 65:7,19,25 66:7,10	66:20 68:3,25 <b>formed</b> 15:1,3 64:1 <b>forms</b> 70:7 <b>forward</b> 15:13 74:14 <b>found</b> 19:17 <b>four</b> 10:1,2 35:20 43:7 <b>fourteen</b> 41:1,2 <b>fragmented</b> 15:5 <b>frame</b> 17:9 <b>franchise</b> 28:3 <b>free</b> 74:2 <b>fresno</b> 23:13,13 <b>front</b> 23:18,21 52:11 <b>function</b> 61:17 <b>fund</b> 68:8 <b>funding</b> 37:8 42:8 59:19,21 <b>funds</b> 38:9 <b>further</b> 69:4	23:7,13,17,19,22 25:23 26:21 27:1 30:8 33:23,25 34:10 36:13 37:10 38:1,4 39:2 45:3,6 45:22,25 46:2,23 54:19 56:23 57:3 57:5,23 58:9,15,19 59:6 60:21 61:7 61:17 62:3,24 63:12,15,17 66:25 68:12,17 <b>geographic</b> 16:17 58:13 <b>geographically</b> 21:14 57:9 <b>georgia</b> 1:22 4:25 5:20,25 6:6,18 70:3,14 72:25 <b>getting</b> 29:25 41:19 50:7 58:18 <b>giant</b> 61:24 <b>give</b> 17:6 64:4 <b>given</b> 8:16 9:16,18 9:25 27:25 72:7 <b>go</b> 17:18 48:25 54:10 56:11 64:10 66:2 69:5,19 <b>goes</b> 31:12 37:25 38:3,6,25 39:1,2 61:2 <b>going</b> 8:6,23 10:10 25:4 35:13 40:12 41:18 42:4 57:4 58:24 64:11 69:2 <b>good</b> 7:15 <b>gpc</b> 23:10 29:20 32:24 33:9 34:4 44:12 53:24 59:22 60:3 65:4,15,18 66:6,9,11 67:3,21
<b>f</b> 72:1 <b>facility</b> 20:6 <b>fair</b> 26:23 28:4 33:11 36:16 37:1 39:10 43:24 46:7 46:12,16 53:22 54:24 55:7 56:2 56:24 59:9 65:6 <b>falls</b> 36:6 <b>familiar</b> 19:3 24:4 31:8 <b>family</b> 6:25 7:16 <b>far</b> 10:4 26:22 53:24 56:18 57:24 63:4 <b>farmers</b> 2:20 41:9 41:13 <b>fast</b> 15:13 <b>fax</b> 74:2 <b>featured</b> 23:1 <b>federal</b> 6:3 <b>feel</b> 50:23 55:13 56:6 <b>festey</b> 18:20 <b>fifty</b> 18:9 30:14 31:16,22,23 43:17 48:4 <b>filled</b> 45:19 <b>financial</b> 25:6 65:1 65:3,9,11 68:22 70:9	<b>f</b>	<b>g</b>	
		<b>gail</b> 3:21 <b>gaines</b> 3:21 <b>gap</b> 16:25 <b>gasket</b> 26:3 <b>gaylord</b> 1:17 2:17 6:7 7:9,18 18:18 24:13 73:4,20 74:8 <b>general</b> 53:6 <b>generalist</b> 23:13 <b>generally</b> 24:5 <b>generating</b> 31:11 <b>genuine</b> 5:4 10:21 12:5,11,14,23 13:10 15:17,20 17:20,24 18:8 21:9,21,24 22:3	

[gradual - know]

Page 7

<b>gradual</b> 53:12 <b>graduate</b> 47:18 <b>graduated</b> 48:2 <b>great</b> 61:23 <b>greater</b> 65:22,24 <b>group</b> 15:8 <b>guaranty</b> 48:4 49:4,23 <b>guerriere</b> 4:5 <b>guess</b> 9:7 39:7 55:10 64:22 <b>guy</b> 56:6	<b>hire</b> 52:20 <b>hired</b> 52:25 <b>historically</b> 17:4 <b>history</b> 16:22 47:3 52:1,1 <b>hlavinka</b> 5:5 <b>honest</b> 62:16 <b>honeywell</b> 3:19 <b>hr</b> 20:19 23:12 <b>huh</b> 11:12,15 <b>hundred</b> 30:13,13 31:15,16,22,23,24 43:16 50:14 66:15 66:19 67:7,19	<b>individuals</b> 12:4 13:13 18:25 22:16 23:6 33:11 45:14 <b>industries</b> 4:3 <b>indy</b> 39:13 42:9 43:1 <b>information</b> 17:12 19:16 20:12,20 21:17 25:1 59:8 60:17,21,23 61:3,4 61:9,11 63:3,14 <b>initiative</b> 46:1 <b>insurance</b> 41:9,13 <b>interest</b> 70:9,18 72:9 <b>international</b> 3:19 <b>interpret</b> 65:10 <b>interrupting</b> 48:21 <b>interstate</b> 1:21 6:5 6:17 <b>introduce</b> 7:17 <b>inventory</b> 28:25 31:12 32:10 <b>investment</b> 31:15 31:22 <b>involvement</b> 16:16 <b>issues</b> 14:2 62:7 <b>item</b> 25:4	<b>jobs</b> 22:14 <b>joele</b> 18:21 <b>judgment</b> 24:15 <b>judicial</b> 5:24 <b>jump</b> 48:22 <b>jumped</b> 34:22 <b>jurat</b> 74:16 <b>jurisdiction</b> 63:11
<b>h</b>	<b>i</b>	<b>j</b>	<b>k</b>
<b>half</b> 43:3,4,7 <b>hand</b> 7:7 8:6 19:8 30:22 41:23 <b>handle</b> 52:10 <b>hangs</b> 26:15 <b>happen</b> 29:10 35:13 <b>happened</b> 29:17 <b>hard</b> 42:25 51:2 <b>hate</b> 38:12 <b>hates</b> 11:18 <b>hawaii</b> 57:6,9,10 <b>hawkins</b> 4:4,21 <b>hawley</b> 13:12 <b>hazards</b> 59:8 <b>head</b> 11:12 24:3 50:3 <b>headquarters</b> 48:17 <b>hear</b> 37:11 <b>heard</b> 28:8,9 <b>hearing</b> 30:9 <b>help</b> 53:5 <b>hennessey</b> 4:3 <b>herd</b> 18:21 <b>hewitt</b> 5:10,11 <b>hey</b> 33:16 58:22	<b>idea</b> 10:5 <b>identified</b> 34:10 <b>identify</b> 24:10 <b>identity</b> 14:11 <b>illustrate</b> 66:21 <b>impact</b> 68:22 <b>impacts</b> 72:17 <b>impartial</b> 72:18 <b>impartiality</b> 70:21 72:11 <b>include</b> 54:5 60:2 <b>included</b> 74:12 <b>including</b> 14:10 20:7 25:13 26:1 61:12 <b>incorrect</b> 20:12 <b>index</b> 2:11 <b>indiana</b> 48:5 49:10 49:10,12 <b>indianapolis</b> 48:3 49:5,8 <b>indicating</b> 74:12 <b>individual</b> 8:4 22:25 41:8 <b>individually</b> 44:9	<b>introduce</b> 7:17 <b>inventory</b> 28:25 31:12 32:10 <b>investment</b> 31:15 31:22 <b>involvement</b> 16:16 <b>issues</b> 14:2 62:7 <b>item</b> 25:4 <b>j</b> <b>j</b> 3:13 5:6 74:5 <b>january</b> 50:17 <b>jason</b> 18:20 <b>jennifer</b> 5:13 <b>jennings</b> 3:12 <b>jersey</b> 74:2 <b>jingle</b> 36:20 <b>job</b> 1:25 45:16 47:2 52:12 <b>jobber</b> 32:20 33:11,18	<b>kahne</b> 41:9 <b>kasey</b> 41:8 <b>keenan</b> 5:13 <b>keep</b> 25:19 44:15 45:5 61:8 <b>keeping</b> 14:18 <b>kennedy</b> 13:21 <b>kennedy's</b> 13:23 <b>kept</b> 63:9 <b>kind</b> 10:5 12:4 13:25 14:4 15:13 16:13 32:10 33:6 34:22,25 38:13 45:14 47:4 52:21 53:3,12,12,23 57:13 59:4 60:5,7 61:1 65:13 <b>knack</b> 50:5 <b>knew</b> 57:4 <b>know</b> 8:19 11:5,10 11:15 12:3 17:20 19:6 20:21 21:19 21:20,23 22:7,24 23:4,5,8,11,15 27:13,14,16,17,21 30:3 34:23 35:7 35:13,16 36:21 37:3 40:18 41:6 41:10 44:19,25 45:7,12 48:7,8,9 53:9 56:5 58:21 63:4,10

[knowledge - mouthful]

Page 8

<b>knowledge</b> 17:17 26:20 59:17,18 62:17	27:19 33:7 43:19 44:21 47:5,11 66:22	43:23 54:23 <b>mark</b> 13:19 18:19 19:9 22:24	67:16 <b>members</b> 15:2,14 16:1,5 17:3,13 60:19 67:12,16
<b>l</b>	<b>livingston</b> 74:2	<b>marked</b> 8:7,11,17 8:20 19:13 22:9 24:9,18 30:22,24 39:24 41:24 42:1	<b>membership</b> 14:25 18:5 28:10
<b>l</b> 6:1 72:20 <b>label</b> 52:23 <b>labeled</b> 26:21 46:20 52:7 <b>lacour</b> 13:12,14 <b>land</b> 44:12 <b>lane</b> 5:7 <b>larger</b> 31:13 <b>largest</b> 21:9 57:23 <b>late</b> 50:16 <b>law</b> 3:20 70:4 <b>lawsuit</b> 2:20 41:6 41:12 <b>lawyer</b> 11:18 <b>layouts</b> 61:12 <b>lcr</b> 1:24 72:20 <b>leadership</b> 12:4,19 <b>leaving</b> 50:11 <b>legal</b> 5:16 6:14 8:8 74:1 <b>legally</b> 64:1 <b>leigh</b> 45:7,10 <b>letter</b> 74:17 <b>level</b> 56:14 61:3 <b>levied</b> 38:20 <b>liability</b> 10:11 <b>license</b> 72:24,25 <b>licenses</b> 62:8,10 <b>lindsey</b> 3:12 <b>line</b> 14:1 73:5 74:12 <b>lists</b> 31:11 <b>literature</b> 54:19 55:1 <b>little</b> 1:3 3:17,25 21:15,19,21 22:4 25:11 26:2 27:2	<b>llc</b> 4:3,12 6:19 <b>llp</b> 3:4,12 4:4,13 4:21 5:5,12 <b>local</b> 68:8 <b>located</b> 63:1 <b>location</b> 34:9 43:24 <b>locations</b> 31:4 <b>logo</b> 26:15 27:14 27:16,20 29:3 35:23 62:8,11 <b>long</b> 62:6 <b>look</b> 14:14,16 17:18 22:2 <b>looked</b> 13:6,20 27:15,16 <b>looks</b> 20:19 <b>lot</b> 23:22 43:16 65:15,16,20 67:11	<b>market</b> 3:6 <b>marketing</b> 26:22 28:18 36:16 38:9 38:13 39:5 53:1 53:13,19,19,21 54:1,3,17 55:12 56:2,5,6,6 59:7,19 61:11 68:1,8 <b>marking</b> 39:23 <b>marriott</b> 1:20 6:5 <b>martin</b> 40:15 <b>maryland</b> 4:17 <b>master's</b> 50:22 51:6 <b>materials</b> 53:5,10 55:3 <b>matter</b> 6:18 53:15 70:19 71:4 72:10 <b>mba</b> 51:8 <b>mean</b> 10:7 17:7 23:22 32:18 38:20 44:13 53:2 58:9 58:18 59:12 61:10 62:1,2,14 68:11 <b>means</b> 72:5 <b>member</b> 12:16 15:17,21 16:7,19 17:21 21:10 25:19 25:21 28:18 37:22 38:3 53:4 54:1 57:2 58:7 59:1,7 60:20 62:25 63:8 63:13 65:5 66:12 66:13,15 67:10,10	<b>mentioned</b> 22:5 <b>merit</b> 6:1 <b>method</b> 14:18 28:13 56:1 <b>michael</b> 40:9 <b>michigan</b> 15:1 <b>mid</b> 16:14 57:13 <b>mike</b> 5:17 6:13 <b>miller</b> 1:24 6:1 7:3 72:20 <b>million</b> 41:1,2,15 43:4,8 <b>millions</b> 67:24 <b>mind</b> 9:3 22:6 47:12 <b>minute</b> 69:6,6 <b>minutes</b> 64:10 <b>moe's</b> 33:14 <b>moment</b> 28:1 <b>money</b> 32:10 35:24 36:4 38:25 39:5,10 42:16,17 67:15,17 68:23 <b>monitor</b> 6:15 <b>monthly</b> 60:18 <b>moores</b> 5:7 <b>morning</b> 7:15 8:16 56:11 <b>morse</b> 1:11 6:19 <b>motion</b> 24:15 <b>motor</b> 3:11 15:8 57:7 <b>mouthful</b> 25:18
	<b>m</b>		
	<b>madam</b> 74:10 <b>maintaining</b> 20:22 21:4,10 70:21 72:11 <b>maintains</b> 18:1 39:11 62:20,24 <b>making</b> 70:20 <b>management</b> 48:6 <b>manager</b> 44:19 48:14,15 53:1 <b>managing</b> 29:15 <b>manufacture</b> 14:5 14:7 46:13 62:8 <b>manufacturer</b> 29:24 36:5 62:19 <b>manufacturers</b> 15:7 37:19,25		

[moved - objection]

Page 9

<b>moved</b> 14:4 46:16 50:12 <b>movement</b> 68:21 <b>moves</b> 60:25 <b>moving</b> 46:10,10 <b>mt</b> 74:1 <b>multiplicity</b> 44:7	33:21,25 34:9 35:10,21,23,25 36:3,14,21 37:1,4 37:6,10,25 38:6,9 38:22 39:1,2,4,11 40:4,23 45:4,16,19 45:20 46:20,21,21 47:4 49:14 50:17 50:17 51:22 52:2 52:5,7,12,17,19,22 53:14,24,24,25 54:10,12,14,16,18 54:22,25,25 55:1,4 55:8,11,13,17,21 55:22 56:13,15,17 56:20,21,25 57:2,6 57:9,25 58:14 59:3,12,13,22,24 60:7,9,11 61:5,5,6 61:11,19,24 62:2,5 62:7,10,11,20,21 63:13,20,24 64:2 64:25 65:3,16 66:9,18,24 67:12 67:13,15,17,22 68:18,23 73:3,4,20 74:6,8 <b>napa's</b> 8:18 19:4,9 19:17 21:4 22:7 22:12,14 30:20 31:3 32:21 33:9 33:10 39:15 42:8 43:13 45:17 46:22 55:3 59:11 <b>napaonline.com</b> 45:18 <b>nascar</b> 39:13 40:3 40:19,25 <b>nascars</b> 42:7 <b>nathalia</b> 18:21	<b>national</b> 7:21 10:17 12:17 13:2 15:22 16:1,7 24:14 36:1 58:3,6 67:4 69:16 <b>nationwide</b> 37:9 <b>nationwise</b> 50:8 50:10 <b>nationwise's</b> 50:13 <b>nature</b> 14:12 <b>ne</b> 4:23 5:18 <b>nearest</b> 21:14 29:14 <b>neat</b> 36:20 <b>necessarily</b> 8:3 66:3 <b>need</b> 30:12 31:23 32:9 33:16 37:6 56:12,17 <b>neighborhood</b> 66:18 <b>network</b> 32:2 33:10,18 58:4 68:18 <b>never</b> 13:14 22:1,5 28:7,8,9 52:10,14 59:3,15 <b>new</b> 74:2 <b>nhra</b> 39:13 43:5 <b>night</b> 51:3 <b>nine</b> 38:23 <b>ninety</b> 38:23 <b>nodding</b> 11:12 <b>nods</b> 24:3 <b>nonprofit</b> 35:10 <b>normally</b> 11:14 <b>north</b> 1:21 3:6 6:5 6:17 <b>northern</b> 57:13 <b>northwest</b> 1:20 6:5	<b>notarized</b> 74:13 <b>notary</b> 73:21,24 <b>note</b> 74:12 <b>notice</b> 2:13 8:10 14:9 21:13 41:20 42:13 <b>noticed</b> 35:5 <b>noticing</b> 71:3 <b>number</b> 1:5 8:7,17 19:10 22:8 24:10 25:4 30:17,17,23 31:2 39:23 44:14 64:23 67:8,21 74:7,12 <b>numbers</b> 43:1
<b>n</b>		<b>o</b>	
<b>n</b> 2:1 3:1 4:1 5:1 5:13 <b>name</b> 6:13,20,22 7:15,18 18:14,16 18:22 20:7 26:14 26:18 27:21 28:3 29:20 33:9 43:10 55:14 56:15 73:3 73:4 74:6 <b>named</b> 41:8 <b>names</b> 18:23 <b>napa</b> 1:16 2:15,16 2:18,19 4:20 5:4 6:21 7:22 8:3 9:19 10:8,8,18,25 11:25 12:1 13:21 14:5,7 14:10,11,19,24,25 16:16 17:4,13,21 18:1,5,6,10 19:18 20:5,6,9,14,18,25 21:3,12,24 22:1,5 22:15,16 23:7,16 23:18,23 24:1 25:6,12,19,20,21 25:22 26:1,9,14,15 26:17 27:7,14,20 27:21 28:2,12,14 28:15,17,25 29:1,3 29:3,4,12,12,19,20 29:21 30:4,7,21 31:4,13,17 32:13 32:15,17,19,20,25 32:25 33:8,15,16		<b>object</b> 11:23 12:6 12:15 13:24 14:15 16:9,18 17:5,15 18:4 19:25 20:3 20:17 21:1,8,25 22:19 23:9,20 24:6 25:17 26:6 26:24 27:4,12 28:6,16 29:7,22 30:15 31:18 32:5 32:16,22 33:12,19 33:24 35:3 37:2 37:12 38:15 39:6 39:18 40:21 41:3 41:18 42:11 43:25 44:10,23 45:2,23 46:8 47:1 52:16 54:2,15,21 55:6,18 56:4 58:5,17 59:10,16,23 60:12 61:14,21 62:9,23 63:21 65:7,19,25 66:7,10,20 68:3,25 <b>objection</b> 9:8,8	

## [objections - percentage]

Page 10

<b>objections</b> 2:14 8:18 9:5 43:6,15 <b>obligation</b> 70:21 72:11 <b>obviously</b> 60:20 62:2 <b>ocga</b> 70:8,10 71:6 <b>octagonal</b> 27:7 61:24 <b>oe</b> 15:6 <b>office</b> 11:3 <b>officer</b> 72:18 <b>offices</b> 6:4 <b>oh</b> 44:11 <b>ohio</b> 47:17 50:13 <b>okay</b> 7:2 8:1,6 9:24 10:2,13,16,20 11:13,21 12:22,25 14:3 15:16,24 16:11 17:19 18:10 18:25 19:3 20:8 20:11 22:23,24 23:5 25:10,25 28:22 29:16,17 30:11,19 31:10,19 33:2,14 34:14,17 34:20 35:9,20 36:14 37:8 38:11 39:21 40:2,3 41:5 41:12,23 42:24 44:19 45:10 46:18 48:1 49:1,4 50:19 50:21,25 51:8,10 51:11 53:17 54:5 56:18 62:20 63:4 64:4 66:17 68:21 <b>old</b> 13:20 <b>omar</b> 3:4 <b>once</b> 9:10 <b>ones</b> 13:21 18:16	<b>open</b> 29:12 <b>opening</b> 22:4 <b>opposed</b> 23:7 <b>oral</b> 6:8 <b>order</b> 33:8 41:14 <b>ordering</b> 71:21 <b>orders</b> 60:24 <b>organization</b> 36:15 <b>organized</b> 15:11 35:10,15 <b>oriented</b> 53:8 <b>original</b> 8:13,22 19:15 22:11 24:20 31:1 40:1 42:3 <b>originate</b> 54:13 <b>originates</b> 56:20 <b>outlaw</b> 39:13 43:10 <b>outlaws</b> 43:11 <b>outlet</b> 20:6 29:13 29:24 <b>outside</b> 27:6 41:19 42:12 61:24 <b>overall</b> 46:15 57:25 65:4 68:12 <b>overlap</b> 58:13,25 <b>owned</b> 21:21,23 22:1 25:22,22 33:23 34:11 38:1 <b>owner</b> 44:20 <b>owners</b> 38:13 <b>ownership</b> 64:2 <b>owns</b> 33:25 63:20 63:24	<b>page</b> 2:3,12,15,16 2:18,19 20:19 73:5 74:12 <b>paperwork</b> 13:6 <b>parkway</b> 1:21 6:6 6:17 <b>parlance</b> 53:23 <b>parnell</b> 4:4,21 <b>parse</b> 25:10 <b>parsons</b> 34:17 <b>part</b> 16:24 25:8 28:17 33:10,17 36:24 37:7 38:8 42:6 52:11 55:8 56:1 62:5 65:2 67:12 <b>particular</b> 25:7 65:2 <b>particularly</b> 10:3 <b>parties</b> 71:8,21 72:18 <b>partner</b> 32:9,14,17 <b>partnering</b> 31:4 <b>partners</b> 14:12 <b>parts</b> 5:4 7:22 10:18,21 12:5,11 12:14,17,23 13:2 13:10 15:5,6,9,10 15:14,17,20,22 16:2,7 17:1,20,24 18:8 21:9,21,24 22:3 23:7,13,17,19 23:22 24:14 25:23 25:24 26:21 27:1 28:14,24 29:25 30:8 32:25 33:8 33:15,16,22,23,25 34:3,9,10 36:13 37:10 38:1,4 39:2 43:23 44:3,6,8,14 44:17 45:3,6,22,25	46:2,4,7,10,23 48:8 54:19 56:10 56:23 57:3,6,7,23 58:9,15,19 59:6 60:21 61:7,17 62:3,24 63:12,15 63:17 66:25 68:13 68:17 69:16 <b>party</b> 62:1,4 70:23 71:8 72:13 <b>pass</b> 69:2 <b>password</b> 71:18 71:20 <b>patrick</b> 5:11 <b>paul</b> 12:2 13:12,14 <b>pause</b> 24:24 64:5 <b>pay</b> 35:19 36:9 38:20 67:2 <b>paycheck</b> 10:23 <b>paychecks</b> 23:6 <b>paying</b> 40:23 41:14 42:18 <b>payment</b> 25:7 65:1 65:3,10,11,17 <b>pays</b> 59:24 67:21 <b>peachtree</b> 4:23 5:18 <b>penalty</b> 74:14 <b>pending</b> 24:16 <b>pennsylvania</b> 16:13 57:17 <b>people</b> 18:22 20:5 20:25 23:15,22,23 35:23 36:25 37:3 37:5 43:22 55:4 55:21 56:10,15 61:9 62:8 <b>percent</b> 38:23 <b>percentage</b> 36:6 36:12 37:9,16,17 37:20 65:4,17
	<p style="text-align: center;"><b>p</b></p> <b>p</b> 3:1,1,21 4:1,1,5 5:1,1 22:25 <b>p.c.</b> 5:10 <b>p1-2968250</b> 73:2		



[percentage - really]

Page 11

66:2,5 67:2,6 68:12 <b>period</b> 17:19,21 25:14 26:4 27:18 <b>perjury</b> 74:14 <b>permitted</b> 9:7 <b>person</b> 13:16 52:14 63:23 <b>personal</b> 35:4,6 <b>pesce</b> 22:25 <b>philadelphia</b> 16:12 <b>phoenix</b> 23:1 <b>phrase</b> 54:7 65:14 <b>picture</b> 57:25 <b>pierce</b> 24:16 <b>place</b> 6:17 17:18 71:5 <b>places</b> 37:15 <b>plaintiff</b> 1:9 3:3 <b>plaintiff's</b> 8:12,21 19:14 22:10 24:19 30:25 39:25 42:2 <b>planograms</b> 61:16 <b>platforms</b> 55:12 <b>plausible</b> 34:24 <b>play</b> 57:24 <b>played</b> 62:5 <b>pleasant</b> 74:1 <b>please</b> 6:22 7:4,7 7:17 24:21 31:6 49:25 51:20 69:13 74:11,11 <b>pleasure</b> 15:2 <b>plf</b> 2:13,14,15,16 2:17,18,19,20 <b>pllc</b> 3:20 <b>pneumo</b> 4:12 <b>point</b> 15:5 16:8 29:16 30:11 40:15 46:13,13,14 47:24	52:14 53:10 54:6 54:8,9 61:22 69:17 <b>portion</b> 12:5 <b>position</b> 12:4,10 12:19,20 <b>positive</b> 56:16 57:17 62:18 <b>poster</b> 54:11 <b>pot</b> 36:7 <b>potential</b> 59:8 <b>potentially</b> 65:22 65:23 66:1 <b>prepare</b> 13:3 <b>prepared</b> 21:13 <b>present</b> 5:9 15:25 <b>president</b> 11:4,4,9 11:21,22 12:1 53:19,20 <b>pretty</b> 48:7 57:20 <b>previously</b> 15:20 <b>primarily</b> 53:2,25 55:11 68:5 <b>primary</b> 39:11 40:4,9,19,24 41:7 41:9,13,15 42:9 <b>print</b> 36:18 <b>printout</b> 31:2 <b>prior</b> 13:17 40:8 47:10 67:3,6 <b>priority</b> 73:1 <b>procedure</b> 6:4 8:9 <b>proceeding</b> 8:18 71:11,19 72:8,17 <b>proceedings</b> 6:9 70:17 <b>proceeds</b> 36:8 <b>process</b> 29:15 56:24 <b>produced</b> 71:11	<b>product</b> 10:11 46:16 52:10 54:12 54:18,20,22,25 56:7 66:24 68:17 <b>production</b> 74:22 <b>products</b> 14:5,8 20:15 21:12 24:2 25:13 26:3,3,4 55:5,22 56:2,3 60:10 62:16 <b>professional</b> 47:23 52:1 70:22 72:12 <b>profit</b> 24:1 65:16 <b>programs</b> 28:18 54:4 55:12 <b>prohibited</b> 71:6 <b>prohibitions</b> 70:11 <b>promoted</b> 53:18 <b>promotional</b> 54:19 55:1 <b>promotions</b> 53:11 <b>protected</b> 71:18 71:20 <b>provide</b> 28:17 33:22 37:19 53:4 53:25 55:11 59:4 62:2 71:3 <b>provided</b> 13:7 53:9 61:4 <b>provides</b> 37:10 43:21 61:11,19,25 <b>public</b> 53:6 73:24 <b>pulled</b> 48:8 <b>purchase</b> 44:13 53:10 54:8,9 55:22 56:12,12 61:22 <b>purchased</b> 34:9 56:9 <b>purchases</b> 67:3,6	<b>purchasing</b> 50:3,4 <b>purpose</b> 13:22 27:25 <b>purposes</b> 38:14 <b>pursuant</b> 5:22 6:3 <b>put</b> 9:1 25:5 29:2 32:7,10 53:10
			<b>q</b>
			<b>quaker</b> 16:6,23 57:6,12 58:10,15 <b>question</b> 25:2,25 28:21 31:20 32:23 33:6 58:12 <b>questioning</b> 9:1 14:1 <b>questions</b> 8:2,24 22:21 24:22 41:24 42:5,21 58:19 60:6 64:7 69:17 71:12 72:4 <b>quinten</b> 3:13
			<b>r</b>
			<b>r</b> 3:1 4:1,14 5:1 72:1 <b>races</b> 43:3,7 <b>racing</b> 39:12,16 59:20 <b>radcliffe</b> 4:14 64:8 <b>radio</b> 36:9,18 <b>rainy</b> 18:20 <b>raise</b> 7:6 56:14 <b>raising</b> 36:24 <b>ran</b> 50:13 <b>read</b> 9:9 13:5 22:20 24:21 31:5 34:14,17 45:8,10 <b>reading</b> 31:19,21 34:13 74:17 <b>really</b> 13:20 14:19 26:10 29:19 30:7

[really - see]

Page 12

35:8 44:2 45:21 45:24 46:10,23 57:21 58:6 59:11 67:14 <b>reardon</b> 18:20 <b>reason</b> 10:8,9 73:5 74:13 <b>receipt</b> 74:16 <b>receipts</b> 65:4 <b>receive</b> 12:22 25:6 33:8 34:3 65:1,3,9 65:11,21 <b>receives</b> 65:5 71:8 <b>receiving</b> 23:6 <b>recess</b> 51:17 64:16 69:10 <b>recognize</b> 56:15 <b>recognized</b> 55:14 55:14 <b>record</b> 6:12,23 7:1 42:6 51:14,23 64:13,18 69:5,7,14 69:19 70:17,20 71:12 72:7 <b>records</b> 45:5 62:20 62:25 <b>refer</b> 28:10 38:16 <b>reference</b> 74:7 <b>referred</b> 46:20 <b>reflect</b> 67:11 <b>reflected</b> 7:1 <b>region</b> 63:11 <b>regional</b> 16:11 57:10,15 <b>regionally</b> 16:5 <b>registered</b> 6:1 <b>regulations</b> 5:23 70:6 <b>related</b> 9:21 14:11 42:13 60:9	<b>relates</b> 38:11 <b>relating</b> 71:19 <b>relationship</b> 29:23 63:19 70:18 72:9 <b>remaining</b> 62:25 <b>remember</b> 18:21 18:24 43:1 49:19 <b>remind</b> 25:3 <b>report</b> 18:16,22 22:3 60:19 70:19 <b>reporter</b> 1:24 5:22 6:2 7:3,4,6 70:1,9 70:13 71:14,16 <b>reporting</b> 5:24 70:6 71:3 73:1 <b>repository</b> 14:19 71:20 <b>represent</b> 6:23 7:16 <b>representations</b> 70:2 <b>representative</b> 1:17 7:23 9:19 <b>representatives</b> 13:11 <b>representing</b> 6:13 <b>required</b> 73:21 <b>reserved</b> 9:6 69:23 <b>responding</b> 31:6 <b>responses</b> 8:2,3,3 <b>responsibilities</b> 53:1 <b>responsibility</b> 53:15 <b>responsible</b> 20:21 21:4 <b>responsiveness</b> 9:5 <b>rest</b> 24:25 67:24 67:25 <b>resume</b> 47:11	<b>retail</b> 33:23 53:1,3 53:8,18 <b>retailer</b> 28:4 <b>returned</b> 74:16 <b>revenue</b> 35:18,21 38:8 60:1,2 67:14 68:2,4 <b>revenues</b> 36:9 <b>review</b> 14:13 74:12 <b>reviewed</b> 13:18 <b>reviewing</b> 13:23 <b>ride</b> 41:16 <b>right</b> 7:7 11:2 13:15 14:21 18:9 19:21 26:16,19 27:24 28:12 29:21 30:14 31:21,25 33:6 34:2,6 35:18 37:11 40:13 43:9 44:4 45:24 46:24 49:16,22 52:9,18 58:16 60:5 61:9 63:6,17 65:12 67:20 68:6,9,16 <b>rights</b> 64:2 <b>riley</b> 5:10 <b>rmr</b> 1:24 72:20 <b>robert</b> 18:20 <b>rock</b> 1:3 3:17,25 21:15,19,21 22:4 26:2 27:2,19 44:21 <b>role</b> 43:18 55:3,16 55:21 56:7 57:24 59:11,14 <b>roles</b> 55:23 <b>romano</b> 5:10 <b>ronald</b> 1:8 6:18 73:3 74:6	<b>roof</b> 44:15 <b>ross</b> 13:21 <b>royalties</b> 35:22 <b>rpr</b> 1:24 72:20 <b>rules</b> 5:23 6:3 11:17 70:5 <b>run</b> 33:14 67:15 67:17 <b>running</b> 28:23 <b>runs</b> 28:13 <b>russell</b> 5:5
			<b>s</b>
			<b>s</b> 1:9,12 3:1,3 4:1 4:22 5:1 22:25 73:5 <b>salary</b> 35:19 <b>sale</b> 24:2 25:7 65:1 <b>sales</b> 37:10 52:14 53:9 60:10 61:22 68:12,21 <b>saxon</b> 4:5 <b>saying</b> 25:20 27:1 31:21 44:11 67:18 <b>says</b> 19:17 20:6,8 20:15 23:12 65:9 <b>scope</b> 41:20 42:12 60:7 <b>season</b> 40:19 <b>seats</b> 11:3 <b>second</b> 24:11 37:18 48:19 51:19 64:4 69:12 <b>secretary</b> 10:17 11:3,9 <b>section</b> 22:13 30:20 31:3 35:14 39:15 45:19 70:8 <b>sections</b> 70:10 <b>security</b> 10:24 <b>see</b> 19:11,19 26:23 31:10 36:2 38:24

[see - suite]

Page 13

39:19 44:11 54:11 66:18 <b>seen</b> 8:14,19 13:14 22:17 31:7 47:9 <b>selected</b> 32:8,8 <b>sell</b> 14:7 30:3 32:25,25 33:17 53:6 60:22,22 <b>selling</b> 56:3,7 68:16 <b>sells</b> 60:18 65:15 65:20 <b>sending</b> 20:12 <b>senior</b> 53:20 <b>separate</b> 22:13 <b>series</b> 14:10 40:4 40:20 42:10 43:2 43:2 60:5 63:22 <b>serve</b> 72:17 <b>served</b> 63:1 <b>serves</b> 15:2 <b>service</b> 25:1 33:22 <b>serviced</b> 63:10 <b>services</b> 28:18 71:3 <b>set</b> 42:5 <b>setup</b> 63:5 <b>seven</b> 18:9 41:14 <b>seventeen</b> 19:18 <b>sheet</b> 73:1 74:12 74:13,14 <b>shelves</b> 52:10 <b>shop</b> 43:22 <b>shops</b> 44:1,2 <b>short</b> 51:17 64:16 69:10 <b>shown</b> 74:14 <b>sign</b> 9:10 27:7 61:23,25 62:14,18 <b>signage</b> 27:6 28:15 29:3 31:12 32:3	61:13,19,22 <b>signature</b> 69:23 72:21 74:13 <b>significant</b> 36:15 39:4,8 51:1 <b>signing</b> 74:13,17 <b>simmons</b> 3:23 <b>simply</b> 8:8 <b>sincerely</b> 74:20 <b>single</b> 44:18 <b>singular</b> 43:24 <b>sir</b> 7:7 19:3,16 29:5 31:2 49:16 74:10 <b>sit</b> 46:19 <b>six</b> 25:4 62:21 <b>sixty</b> 18:1 20:9,16 21:11 41:14 <b>small</b> 35:24 36:6 36:11 37:16,20 50:1,3 <b>social</b> 10:24 <b>socinski</b> 18:19 <b>sold</b> 25:15 46:4,5 56:2 62:16 65:21 <b>solely</b> 70:25 72:14 <b>solutions</b> 5:16 6:14 54:1 74:1 <b>somebody</b> 30:12 32:1 <b>soon</b> 26:8 <b>sorry</b> 13:15 16:12 42:7 46:9 <b>sort</b> 45:5 50:5 52:11 58:21 <b>sorts</b> 28:4 <b>sotelo</b> 23:3 <b>sounds</b> 33:5 <b>source</b> 44:8,18 <b>sources</b> 35:21 44:7	<b>sourcing</b> 43:23 <b>south</b> 4:15 <b>speak</b> 36:7 <b>speaking</b> 17:4 24:5 <b>specific</b> 17:8 60:23 71:7 <b>specifically</b> 27:3 61:1 70:4 <b>spencer</b> 1:17 2:17 6:8 7:9,18,19 9:15 18:18 24:14 64:20 73:4,20 74:8 <b>spends</b> 39:4 <b>spoke</b> 68:4 <b>sponsor</b> 40:4,9,19 40:24 41:7,9 42:9 <b>sponsorship</b> 39:11 41:14,16 43:14 <b>sponsorships</b> 36:10 39:17 <b>spread</b> 49:9 <b>sprint</b> 40:4,19 <b>standpoint</b> 12:18 56:14 <b>stands</b> 35:1 <b>start</b> 31:6 52:2 <b>started</b> 17:11 57:1 <b>state</b> 6:22 70:14 <b>stated</b> 72:3 <b>statement</b> 24:5 25:5 64:24 <b>statements</b> 59:5,5 <b>states</b> 1:1 18:2 39:13 62:22 <b>stenographic</b> 7:1 <b>stipulations</b> 9:1 <b>stock</b> 52:10 <b>stockholders</b> 63:22 64:2	<b>stocking</b> 60:23 <b>stop</b> 48:19 <b>store</b> 28:14,24 29:12,21,23,25 30:4,4,4,12,21 31:4,13,17 32:19 33:15 34:11 38:13 44:16 48:14,15 52:11 54:11 56:10 61:12,13 63:18 66:18,18,24 <b>stores</b> 33:1,23 34:1 36:1 37:16 38:12 38:20 44:3,6,7 48:4,4 50:14 61:12,18 62:21,25 63:10 66:8 68:7 68:15 <b>strategy</b> 53:20 <b>stream</b> 39:3 68:15 68:15 <b>streams</b> 60:1,2 68:2,4 <b>street</b> 3:6 4:15,23 5:18 <b>stuff</b> 32:11 65:15 65:20 <b>subcontract</b> 70:25 <b>subcontractor</b> 70:15 72:15 <b>submitted</b> 71:13 71:16 <b>subscribed</b> 73:21 <b>sued</b> 10:8 <b>sufficient</b> 47:2 61:4 <b>suggested</b> 61:12 <b>suggestions</b> 53:10 <b>suing</b> 10:9 <b>suite</b> 3:7,16 4:8,16 4:24 5:19 74:1
--	---	---	--



[summary - utilize]

Page 14

<b>summary</b> 24:15 <b>supplier</b> 36:5 <b>suppliers</b> 36:13 37:19,25 43:23 60:24 62:10,12,14 68:14,15,16 <b>support</b> 24:14 <b>suppose</b> 44:20 50:6 <b>sure</b> 9:12 11:13 13:25 22:20,22 24:8,12 27:5 28:20 31:5 32:18 37:14 39:9 42:22 47:25 51:4,13 52:23,23 55:24,25 56:8 62:13,15 66:23 <b>swear</b> 7:5 <b>swingle</b> 18:19 <b>sworn</b> 7:10 73:21 <b>system</b> 17:2 48:14	<b>tell</b> 10:6 13:3,17 17:10 48:22 66:13 <b>telling</b> 19:23 20:1 45:21 <b>tenure</b> 55:10 <b>terms</b> 36:5 70:25 72:15 <b>territory</b> 59:2 <b>testified</b> 7:11 10:6 34:8 <b>testimonies</b> 34:22 <b>testimony</b> 1:16 <b>texarkana</b> 5:8 <b>texas</b> 3:8 4:9 5:8 28:24 <b>thackston</b> 4:4,21 <b>thank</b> 9:14 36:22 <b>thanks</b> 24:21 <b>thereto</b> 72:5 <b>thing</b> 45:5 53:12 56:25 62:13 <b>things</b> 11:4 14:3 14:12 15:4 35:23 48:7,25 52:3 54:6 56:9 61:16 64:10 <b>think</b> 9:9 13:19 14:17 15:23 16:6 18:23 22:25 23:23 26:25 31:19 32:11 32:23 33:3 37:6 40:15 42:12 43:1 50:9 55:7 56:16 56:17 57:16 <b>thinking</b> 56:11 <b>third</b> 62:1,4 <b>thirteen</b> 18:12 19:21 20:24 23:15 61:6 <b>thirty</b> 74:16 <b>thomas</b> 1:8 4:14 6:18,25 7:16 34:7	34:8,14 73:3 74:6 <b>thousand</b> 19:18 30:13,14 31:15,16 31:23,24 43:17 62:21 66:16,19 67:8,19 <b>three</b> 10:1,2 11:11 35:20 43:4,7 50:14 <b>time</b> 6:15 9:6 16:8 17:7,8,20,21 22:20 25:14 26:4 27:18 29:16 30:11 51:23 53:2,7,14 62:6 64:11 69:3,18 71:8 <b>times</b> 9:24 10:1 49:11 <b>today</b> 7:20 13:4 19:9,17 46:19 <b>told</b> 20:13 <b>toll</b> 74:2 <b>tom</b> 64:6 <b>tom's</b> 64:11 <b>topic</b> 42:13 <b>topics</b> 21:12 <b>total</b> 31:21 <b>tower</b> 3:23 <b>track</b> 61:8 63:9 <b>trade</b> 28:11 <b>trademark</b> 62:7 <b>trainee</b> 48:6 <b>trainees</b> 48:8 <b>transcribed</b> 72:5 <b>transcript</b> 8:13,22 9:7,10 19:15 22:11 24:20 31:1 40:1 42:3 71:10 72:6 74:11,12 <b>transcription</b> 72:6	<b>transcripts</b> 47:10 71:10,18 <b>trial</b> 9:6 <b>true</b> 27:10 71:11 72:7 <b>truth</b> 19:23 20:1 <b>try</b> 15:9 37:13 55:12 56:13 <b>trying</b> 53:4 <b>tuex</b> 40:15 <b>turn</b> 65:5 <b>tv</b> 36:18 <b>twenty</b> 43:7 53:21 <b>two</b> 30:13 31:15 31:24 37:15,15 51:21 68:2,4 69:20 <b>type</b> 58:19 <b>types</b> 10:5 <b>typically</b> 16:21
<b>t</b>			<b>u</b>
<b>t</b> 72:1,1 <b>take</b> 64:9 69:6 <b>taken</b> 72:3 <b>talk</b> 21:13 22:3 27:24 43:19 <b>talked</b> 56:19 57:12 59:20 60:2 61:20 <b>talking</b> 11:15 31:14 34:1 47:3 51:25 60:13 61:15 62:13 63:5 66:8 <b>tax</b> 35:15 38:12,13 <b>taxes</b> 10:24 <b>tec</b> 1:11 6:19 <b>technicians</b> 37:6 <b>television</b> 36:9 56:19	14:12 15:4 35:23 48:7,25 52:3 54:6 56:9 61:16 64:10 <b>think</b> 9:9 13:19 14:17 15:23 16:6 18:23 22:25 23:23 26:25 31:19 32:11 32:23 33:3 37:6 40:15 42:12 43:1 50:9 55:7 56:16 56:17 57:16 <b>thinking</b> 56:11 <b>third</b> 62:1,4 <b>thirteen</b> 18:12 19:21 20:24 23:15 61:6 <b>thirty</b> 74:16 <b>thomas</b> 1:8 4:14 6:18,25 7:16 34:7	34:8,14 73:3 74:6 <b>thousand</b> 19:18 30:13,14 31:15,16 31:23,24 43:17 62:21 66:16,19 67:8,19 <b>three</b> 10:1,2 11:11 35:20 43:4,7 50:14 <b>time</b> 6:15 9:6 16:8 17:7,8,20,21 22:20 25:14 26:4 27:18 29:16 30:11 51:23 53:2,7,14 62:6 64:11 69:3,18 71:8 <b>times</b> 9:24 10:1 49:11 <b>today</b> 7:20 13:4 19:9,17 46:19 <b>told</b> 20:13 <b>toll</b> 74:2 <b>tom</b> 64:6 <b>tom's</b> 64:11 <b>topic</b> 42:13 <b>topics</b> 21:12 <b>total</b> 31:21 <b>tower</b> 3:23 <b>track</b> 61:8 63:9 <b>trade</b> 28:11 <b>trademark</b> 62:7 <b>trainee</b> 48:6 <b>trainees</b> 48:8 <b>transcribed</b> 72:5 <b>transcript</b> 8:13,22 9:7,10 19:15 22:11 24:20 31:1 40:1 42:3 71:10 72:6 74:11,12 <b>transcription</b> 72:6	<b>uh</b> 11:12,15 <b>umbrella</b> 15:4 <b>understand</b> 7:19 8:1 10:16 14:2 15:12 21:7 30:17 35:9 45:15 46:9 55:19,20 65:8 <b>understanding</b> 31:20 58:20 <b>understood</b> 13:25 <b>uniforms</b> 35:22 <b>united</b> 1:1 18:2 39:12 62:22 <b>university</b> 50:23 <b>unwritten</b> 58:22 <b>uploaded</b> 71:20 <b>use</b> 9:7 36:8 38:12 46:14 64:11 <b>utilize</b> 62:10

[v - young]

Page 15

<b>v</b>	<b>want</b> 22:20 25:10 28:25 29:2 30:3 36:25 37:4 45:15 47:4,10 48:24 52:2,2 60:7 62:12 66:21 69:6 <b>wanted</b> 29:12 42:6 45:16 64:20 <b>wanting</b> 37:4 <b>warehouses</b> 46:3,5 46:5 <b>warner</b> 1:11 6:19 <b>warning</b> 59:5 <b>washington</b> 24:17 <b>way</b> 13:21 14:4 15:3,10 34:15 41:19 42:12 48:13 50:2 52:3 53:16 56:16 <b>web</b> 2:15,16,18,19 <b>website</b> 19:4,6,9 19:17,24 20:2,4,8 20:11,15,18,19,22 21:4,10 22:7,12,14 30:20 31:3 39:16 45:18 46:22 <b>went</b> 45:17,18 48:3 50:4,10,17 <b>west</b> 3:15,24 <b>whiteside</b> 3:13 <b>whitney</b> 18:19 <b>wholesale</b> 53:7 <b>wide</b> 54:23 <b>willmar</b> 16:24 57:7,14,19 <b>wish</b> 65:5 <b>withdraw</b> 17:25 22:6 <b>witness</b> 6:8,20 7:5 35:8 42:25 51:11 69:3 73:4 74:8,11	<b>witnesses</b> 71:17 <b>witness'</b> 74:13 <b>witte</b> 5:10 <b>word</b> 23:21 26:9 38:12 <b>words</b> 14:23 32:4 <b>work</b> 19:1 20:5 22:16 23:16 45:20 45:22 48:3 49:7 50:10,17 51:2 <b>worked</b> 48:13 50:2 52:4 <b>working</b> 46:1 <b>works</b> 20:25 62:19 65:14 <b>world</b> 26:22 43:11 <b>wright</b> 3:12 <b>wrinkle</b> 33:7 <b>write</b> 30:12 32:1 <b>written</b> 58:21
<b>v</b> 73:3 74:6 <b>value</b> 27:25 43:21 44:5 <b>variety</b> 25:23 54:23 <b>various</b> 10:8,9 22:14 49:11 <b>vendors</b> 44:14 <b>verbatim</b> 70:20 <b>veritext</b> 5:16 6:14 70:15 71:2 73:1 74:1,7 <b>versus</b> 6:19 <b>vice</b> 11:4,21 53:19 53:20 <b>video</b> 6:15,16 51:21 69:20 <b>videographer</b> 5:15 6:12 7:2 51:14,19 64:13,18 69:7,12 69:20 <b>videotape</b> 1:16 <b>view</b> 67:4 <b>virtues</b> 54:12 <b>visibility</b> 45:25 <b>volume</b> 58:2 <b>vs</b> 1:10		<b>x</b>
<b>w</b>		<b>x</b> 2:1
<b>w</b> 74:1 <b>wait</b> 56:11 <b>waived</b> 74:17 <b>wake</b> 56:10 <b>waldrop</b> 5:5 <b>walk</b> 26:25 47:22 52:21 <b>walkthrough</b> 47:11 <b>waltrip</b> 40:10		<b>y</b> <b>yeah</b> 18:15 24:23 36:23 40:14,17 41:4 43:12 48:12 54:3,9 55:7 57:16 63:7 <b>year</b> 40:23,25 41:15 43:14 49:19 52:24 67:3,6,17 <b>yearly</b> 42:8 <b>years</b> 15:13 41:8 48:15 50:11 53:21 64:22 <b>yellow</b> 27:7 61:24 <b>young</b> 4:4,21

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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